

**WORKING CONSOLIDATED DOCUMENT**  
**June 2009**  
**TRUST DEED**  
**FOR THE**  
**GROSVENOR PIRIE MASTER SUPERANNUATION FUND SERIES 2**

(Original Deed dated 2 December 2003)  
(Deed of Amendment dated 15 February 2005)  
(Deed of Amendment dated 30 May 2006)  
(Deed of Amendment dated 25 May 2007)  
(Deed of Amendment dated 25 June 2007)  
(Deed of Amendment dated 23 February 2009)

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## **SECTION ONE**

### **TERMS AND CONDITIONS**

#### **Schedule 1 – Part 1**

##### **GENERAL**

###### **1.1 Purposes for which Fund is maintained**

The Trustee must ensure that each Fund is maintained solely:

- (a) or one or more Core Purposes; or
- (b) for one or more Core Purposes and one or more Ancillary Purposes.

###### **1.2 Legislative Compliance**

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

###### **1.3 Deemed Compliance**

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

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

###### **1.4 Specific Requirements**

- (a) To the extent that any provision (or part of a provision) in this Deed conflicts with Part 6 of SIS.
  - (i) that provision (or part of a provision) must be read down, changed, construed or severed to avoid such conflict; and
  - (ii) to the extent that such conflict cannot be avoided, the provision (or part of a provision) will be of no effect.

- (b) If a provision of this Deed would otherwise be void because it:
  - (i) subjects the Trustee to direction by another person; or
  - (ii) permits a person to exercise a discretion without the consent of the Trustee,

the Trustee's consent is required for the giving of the direction or the exercise of the discretion.
- (c) Where a provision of the Relevant Law is required to be included in this Deed in order to comply with the Relevant Law, such provision is deemed to be included in this Deed for so long as the provision is required to be so included.
- (d) Without limiting paragraphs 1.4(a) and 1.4(c), the following provisions of the Relevant Law (and any corresponding regulations) apply despite any other provisions of this Deed, for so long as the provision of the Relevant Law is required to so apply:
  - (i) section 52 of SIS (Covenants to be included in governing rules)
  - (ii) section 56 of SIS (Indemnification of trustee from assets of entity);
  - (iii) section 57 of SIS (Indemnification of directors of trustee from assets of entity);
  - (iv) section 58 of SIS (Trustee not to be subject to direction);
  - (v) section 59 of SIS (Exercise of discretion by person other than trustee);
  - (vi) section 60 of SIS (Amendment of governing rules); and
  - (vii) section 60A of SIS (Dismissal of trustee of public offer entity).

#### **1.5 Protection of Member's benefits**

Despite any contrary provisions in this Deed:

- (a) the Trustee will only pay a Member's benefit to, or to the order of, that Member or as otherwise permitted by the Relevant Law in respect of that Member; and

- (b) the accrued benefit of a Member cannot be reduced or the Member deprived of that benefit in any circumstances except as permitted by the Relevant Law approved by the Regulator.<sup>1</sup>

## Schedule 1 – Part 2

### SPECIFIC LEGISLATIVE COMPLIANCE AND OPERATIVE PROVISIONS

#### 2.1 Definitions

**Ancillary Purpose** means the provision of benefits for each Member on or after the termination of the Member's employment with an employer who had (or any of whose associates had) at any time, contributed to the Fund in relation to the Member and such other purposes that are prescribed as ancillary purposes by or for the purposes of SIS.

**Beneficiary** in respect of a Member means:

- (a) a Dependant; or
- (b) the legal personal representative of the Member; or
- (c) any other person to whom the Trustee is permitted to pay a death benefit in accordance with the Relevant Law.

**Child Account** means an account maintained by the Trustee in respect of a Child Member.

**Child Member** means a Member who is:

- (a) less than 18 years of age; and
- (b) not a Standard Employer-Sponsored Member.

**Core Purpose** means the provision of benefits for each Member on retirement and such other purposes that are prescribed as core purposes by or for the purposes of SIS.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Dependant**<sup>2</sup> has the meaning ascribed to that term in the Superannuation Industry (Supervision) Act 1993.

**Entitlement** means the benefit payable to a Member on withdrawal from the Fund.

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<sup>1</sup> This clause has been inserted by way of a Deed of Amendment dated 15 February 2005.

<sup>2</sup> This definition was replaced by way of a Deed of Amendment dated 23 February 2009.

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

**Interdependency Relationship** has the meaning set out in SIS.

**Regulator** has the meaning set out in SIS.

**Relevant Law**<sup>3</sup> means the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry Supervision Regulations*, the *Corporations Act 2001*, the *Corporations Regulations*, the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Regulations*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the *Family Law Act 1975*, the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*, the *Bankruptcy Act 1966* and any other applicable Act, regulation or other lawful requirement (as amended from time to time) with which the Trustee or the Fund must comply (whether to avoid breaching the relevant Act, regulation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose).

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

**Spouse**<sup>4</sup> has the meaning ascribed to that term in the *Superannuation Industry (Supervision) Act 1993*.

**Standard Employer-Sponsored Member** has the meaning set out in SIS.

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

## 2.2 **Trustee and licenses**

The Trustee must hold all relevant licenses and authorities as required under the Relevant Law.

## 2.3 **Transfers of Entitlements**

- (a) If a Member requests in writing to the Trustee that all or part of their Entitlement in the Fund be paid or transferred to such person or other body as the Member may nominate;
  - (i) if such payment or transfer would be required by SIS, the Trustee must; and
  - (ii) in all other cases the Trustee may

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<sup>3</sup> This definition was replaced by way of a Deed of Amendment dated 25 June 2007.

<sup>4</sup> This definition was replaced by way of a Deed of Amendment dated 23 February 2009.

pay or transfer the amount of that Member's Entitlement or that part of it to that person or other body requested within such period of time as specified by, and subject to, SIS.

- (b) Before a payment or transfer is made in accordance with paragraph 2.3(a), if required by SIS, the Trustee must provide the Member with information that relates to the payment or transfer of their entitlement from the Fund and that satisfies the relevant provisions of SIS.
- (c) If the Trustee requires further information in relation to the request made by the Member pursuant to paragraph 2.3(a), the Trustee must, if required by SIS, ask the Member for the information required as soon as practicable after receiving such request from the Member.
- (d) The Trustee:
  - (i) may refuse to carry out a request made by the Member pursuant to paragraph 2.3(a)(i) if:
    - (A) such refusal is in accordance with the relevant provisions of SIS; or
    - (B) its power to pay or transfer a Member's Entitlement has been suspended by the Regulator pursuant to the relevant provisions of SIS; or
  - (ii) may:
    - (A) refuse to carry out a request made by the Member pursuant to paragraph 2.3(a)(i) if its power to pay or transfer a Member's Entitlement has been varied by the Regulator pursuant to the relevant provisions of SIS; and
    - (B) in the event that the Trustee's power to pay or transfer a Member's Entitlement has been varied in accordance with paragraph 2.3(d)(ii)(A), the Trustee may, subject to the consent of the Member, pay or transfer a Member's Entitlement in accordance with such variation.
- (e) If, pursuant to paragraph 2.3(d), the Trustee refuses to carry out a request made by the Member in accordance with paragraph 2.3(a)(i), it must inform the Member of the reason for such refusal or variation.



- (f) A payment of any amount of a Member's Entitlement made pursuant to this clause 2.3 will be in complete discharge and satisfaction of the Trustee's obligations to the Member in respect of that amount of the Member's Entitlement.

#### **2.4 Adjustment of Benefits**

Subject to SIS, the Trustee may adjust the benefits of a Member to take account of:

- (a) any contributions which have not been paid;
- (b) any tax, costs or expenses of the Fund;
- (c) any incorrect, inaccurate or misleading information supplied, or lack of information supplied, in respect of a Member; and
- (d) any refund or repayment of co-contributions and any other amounts as required by the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth).

#### **2.5 Child Member Benefits**

Notwithstanding anything in this Deed to the contrary:

- (a) a Child Member, on satisfying a Condition of Release (as described in SIS) will be entitled to the sum of their Child Account;
- (b) a Child Member cannot exercise any right, power, discretion or approval which he or she is not empowered to validly exercise at law;
- (c) the rights and benefits of a Child Member shall be subject to SIS.

#### **2.6 Overriding Death Benefit Provisions**

- (a) The Trustee may offer a facility to Members whereby Members can specify:
  - (i) the identity of their Beneficiaries; and
  - (ii) the manner of payment of their death benefits.
- (b) As part of those arrangements, the Trustee may provide that the specifications by Members can take the form of:
  - (i) a nomination which is binding on the Trustee and which complies with the relevant requirements of SIS;

- (ii) death benefit categories formulated by the Trustee and which are binding on the Trustee; or
  - (iii) a request for a pension to be paid to a reversionary beneficiary or beneficiaries.
- (c) Where the Trustee determines to offer such a facility, the terms of the facility as formulated by the Trustee will be as set out in the product disclosure statements or other Member communications issued by the Trustee from time to time.
- (d) The terms of such a facility, as set out in the product disclosure statements or other Member communications, will override any inconsistent provisions of this Deed to the extent of the inconsistency and, without limitation, such terms will override the provisions of this Deed dealing with the payment of benefits on death to the extent of any inconsistency.

## **2.7 Information requirements<sup>5</sup>**

An applicant for membership, a Member, a Beneficiary, a claimant for a benefit, an Employer-Sponsor and any other person contributing paying or transferring amounts to the Fund in respect of a Member must give to the Trustee (or the Trustee's agent) all information, evidence and proofs reasonably requested by the Trustee in order to administer the Member's benefits and the Fund in accordance with this Deed or to comply with the Relevant Law. If any of the requested information, evidence or proofs is not provided or is later found to be inaccurate or incomplete, the Trustee may reject an application or claim, refuse to accept contributions, and impose conditions on or adjust affected benefits in the manner and to the extent the Trustee considers necessary or appropriate.

## **2.8 Acceptance of Contributions**

The Trustee must not accept contributions in respect of a Member where:

- (a) the Relevant Law does not permit acceptance of such contributions; or
- (b) the Trustee determines not to accept contributions of a particular type or in particular circumstances.

## **2.9 Refund of Contributions**

The Trustee must refund a contribution if required by the Relevant Law and may refund any contribution made in error. In refunding contributions

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<sup>5</sup> Previous clause 2.7 was renumbered 2.20 and clauses 2.7 to 2.19 were inserted by way of a Deed of Amendment dated 25 June 2007.

the Trustee may deduct any negative investment earnings or movement in unit price and an amount for reasonable administration and transaction costs, including an appropriate proportion of any insurance premium paid in respect of the Member or not recoverable by the Trustee.

#### **2.10 Allocation of Contributions**

The Trustee must allocate contributions to a Member at the times and otherwise in accordance with the Relevant Law.

#### **2.11 Limits on Splittable Contributions**

Notwithstanding any other provision of this Deed, the Trustee must only permit a Member to transfer contributions to the Member's spouse not exceeding the maximum splittable amount under, and otherwise in accordance with, the Relevant Law. The Trustee may make any other adjustments to the splittable amount that it considers necessary or appropriate having regard to its Tax obligations.

#### **2.12 Power to Make Rules and Policies**

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

#### **2.13 Compliance Requirements for Transfers**

The Trustee is empowered to make any transfer from the Fund required under the Relevant Law. All transfers out of the Fund are subject to such conditions and must be made within the timeframes required under the Relevant Law. The Trustee must provide to the person responsible for the transferred amount such information as the Relevant Law requires.

#### **2.14 Illiquid Investments**

Where a Member's benefits are wholly or partly invested in an illiquid investment as a consequence of the Member exercising a choice regarding the investment of the Member's benefits, the Trustee shall not be liable for any loss, cost, expense or other liability arising from a delay in the transfer or payment of the benefit associated with a delay in realising the illiquid investment.

#### **2.15 Benefit Payment Requirements**

The Trustee may suspend consideration of a person's claim to or payment of a benefit until all required information evidence and proofs are provided to the satisfaction of the Trustee and, if the required information

evidence and proofs are not provided to the Trustee's satisfaction or the Relevant Law so requires, the Trustee may withhold payment.

#### 2.16 **Tax**

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

- (a) adopting policies relating to the application or timing of Tax credits and Tax debits to Member accounts;
- (b) adopting policies relating to the acceptance of members and contributions without any required or desirable tax-related information;
- (c) adopting policies relating to the claiming of Tax refunds;
- (d) reducing or otherwise adjusting contributions to or benefits or other amounts payable from the Fund, in which case the Member will be entitled to only the net amount;
- (e) providing information and making payments to the Regulator;
- (f) establishing reserves and making provisions in the accounts of the Fund; and
- (g) charging to recover the costs and expenses attributable to administering any Tax requirement.

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

#### 2.17 **Membership**

For the avoidance of doubt, if the Trustee receives, or determines that it holds, an amount (**Residual Amount**) that relates to the benefits that a person has previously received (other than the Residual Amount), and the Trustee determines that the Residual Amount is to be paid to the person, the Residual Amount will not result in the issue of a new interest but forms part of the original interest associated with the benefits previously paid to the person.

#### 2.18 **Electronic Delivery**

Without limiting the means by which notices may be given or information may be disseminated, the Trustee may give notice or provide information by any form of data or image transmission or communication facility or medium, including without limitation facsimile, electronic mail and the

internet, in which case the notice will be considered to have been received when transmitted, accessed or published (as the case may be).

## 2.19 Pensions

### (a) Form of Pension

The Trustee may pay any form of pension that is approved by the Trustee and permitted by the Relevant Law.

### (b) Payment of Pension

Where a Member or Beneficiary has elected to be paid a pension, the pension may be paid in such manner as is agreed between the Trustee and the Member or Beneficiary, or in the absence of agreement as the Trustee determines provided the pension satisfies the standards of a pension referred to the Relevant Law.

### (c) Deemed inclusion of Relevant Law

This Deed is deemed to include each requirement of the Relevant Law that the governing rules under which a pension is provided must satisfy for the pension to be a relevant pension for the purposes of the Relevant Law.

### (d) Commutation

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

### (e) Variation

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

### (f) Reversionary Beneficiary

A Member may nominate one or more Dependants as a reversionary beneficiary to whom the pension must be transferred after the Member's death provided that the nomination is consistent with the Relevant Law. The Trustee must reject any nomination that is not consistent with the Relevant Law, in which

case, if the Member does not provide a nomination that is consistent with the Relevant Law, the balance of the pension as at the Member's death must be paid to the reversionary beneficiary as a lump sum or paid in accordance with this Deed at the Trustee's discretion.

**(g) Commutation of Reversionary Beneficiary Pension**

Subject to the requirements of the Relevant Law, a reversionary beneficiary may elect to:

- (a) commute a part or all of a pension by notifying the Trustee in a manner approved by the Trustee; or
- (b) limit any right of commutation that the reversionary beneficiary might otherwise have to ensure that the pension complies with the Relevant Law,

provided that the Trustee must commute a reversionary beneficiary's pension if and to the extent that the Relevant Law so requires.

**2.20 Overriding Effect of Parts 1 and 2**

Parts 1 and 2 of Schedule 1 of the Deed operate as follows:

- (a) Definitions defined for the purposes of Parts 1 and 2 of Schedule 1 will apply only to Parts 1 and 2 of Schedule 1;
- (b) Clauses contained in Parts 1 and 2 of Schedule 1 override any inconsistent provisions of the Deed to the extent of the inconsistency.<sup>6</sup>

**1. DEFINITIONS & INTERPRETATION**

1.1 Unless the provisions of this Deed expressly provide for a different meaning, words and expressions used in this Deed have the same meaning as is given to them in the SIS Act or the SIS Regulations.

1.2 In this deed unless the context otherwise requires or permits:

- (a) **Actuary** means the Actuary for a Fund appointed by the Trustee;

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<sup>6</sup> This clause has been inserted by way of a Deed of Amendment dated 15 February 2005.

- (b) **Administrator** means a person appointed to administer a Fund under clause 14.2;
  - (c) **Allocated Pension** has the meaning given in clause 26;
  - (d) **Approved Valuer** means with respect to any Division any person who is independent of the Trustee who is experienced in relation to the valuation of assets of the kind which are required to be valued and who holds any licence or registration which may be required to act as a valuer in the relevant jurisdiction and who is appointed by the Trustee to act as the approved valuer in relation to the Division;
  - (e) **APRA** means Australian Prudential Regulatory Authority set up under the Australian Prudential Regulatory Authority Act 1998;
  - (f) **ASIC** means the Australian Securities & Investments Commission set up under the Australian Securities & Investments Commission Act 1989;
  - (g) **ATO** means the Australian Tax Office;
  - (h) **Beneficiary** means a Member or former Member who has a beneficial interest in a Fund and their legal personal representative or any other person claiming through them including any person who is entitled to or claims to be entitled to an interest in any death benefit;
  - (i) **Benefit** means an amount or amounts which a Member or a person claiming through a Member is entitled to receive from a Fund;
  - (j) **Benefit Specification** means in relation to a Member or a Employer-Sponsor the details prescribed in relation to:
    - (i) choice of investment options;
    - (ii) insured benefits;
    - (iii) the Benefits to be provided from a Fund for Members;
    - (iv) any other matters which the Trustee from time to time may require to be set out in a Benefit Specification.
- The Benefit Specification may be created as a schedule or attachment or annexure to any Part.
- (k) **Commodity** means any tangible personal property, currency, interest rate, financial index or indices (including any share index)

or such other tangible or intangible thing determined by the Trustee for the purposes of this definition.

- (l) **Complying Fund Requirements** means those requirements set out in the SIS Act or in the SIS Regulations (as in force from time to time) which would cause a Fund to cease to be a Complying Superannuation Fund if they were contravened by the Trustee and a Fund did not pass the culpability test in relation to that contravention;
- (m) **Complying Superannuation Fund** has the meaning given in the SIS Act;
- (n) **Contributions** means payments made to a Fund by, for or on behalf of a Member or Members in accordance with the provisions of this Deed before deduction of any taxation payable in respect of those contributions;
- (o) **Contributions-Splitting ETP** has the same meaning as in the Income Tax Act.<sup>7</sup>
- (p) **Contributions Tax** means the tax or surcharge payable under the Superannuation Contributions Tax (Assessment and Collection) Act 1997;
- (q) **Dealer** has the meaning given to that expression by the Corporations Act or any substitute or replacement therefore;
- (r) **Deed, the Deed or this Deed** means this Trust Deed and each other Deed in force from time to time governing a Fund, as amended from time to time;
- (s) **Dependant**<sup>8</sup> has the meaning ascribed to that term in the Superannuation Industry (Supervision) Act 1993.
- (t) **Derivative** means any financial instrument or arrangement other than a futures contract, put option or call option that relates to an authorized investment or commodity and includes (without limitation) any interest exchange or hedge, forward rate agreement, swap, cap, floor or collar;
- (u) **Disclosure Document** means any document offering participation in or membership of a Division issued by the Trustee in accordance with the Complying Fund Requirements and the Corporations Act and Regulations;

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<sup>7</sup> This clause has been inserted by way of a Deed of Amendment dated 30 May 2006.

<sup>8</sup> This definition was replaced by way of a Deed of Amendment dated 23 February 2009.



- (v) **Disqualified Person** has the meaning given to that expression in the SIS Act;
- (w) **Division** means:
  - (i) if the Trustee has established one or more divisions under clause 2 – the Regulated Superannuation Funds constituted pursuant to clause 2 of this Deed; or
  - (ii) if the Trustee has not established a division under clause 2 – the Grosvenor Pirie Master Superannuation Fund Series 2.<sup>9</sup>
- (x) **Eligible Person** means a person who is gainfully employed on a full time or part time basis by an Employer or who otherwise is a person in respect of whom the Trustee may accept contributions without contravening the Complying Fund Requirements;
- (y) **Employer-Sponsor** has the meaning given in the SIS Act;
- (z) **Exempt Dealer** has the meaning given to that expression in the Corporations Law or substitute or replacement therefore;
- (aa) **Financial Year** means a period of twelve months ending on the 30th June and any part of a period that may occur until termination of a Fund;
- (bb) **a Fund or the Fund** means each indefinitely continuing superannuation or retirement fund set up as a Division under this Deed governed controlled and administered under this Deed;
- (cc) **Income Tax Act** means the Income Tax Assessment Act 1936 (as amended) (“the 1936 Act”) unless the relevant provisions of the 1936 Act have been rewritten and are included in the *Income Tax Assessment Act 1997 (as amended)* (“the 1997 Act”) when it means the 1997 Act;
- (dd) **Insurer** means a life insurance company which has issued a life policy to the Trustee covering a Member or group of Members;
- (ee) **Investment Manager** means a person appointed in accordance with this Deed as Investment Manager for the whole of or any part of the assets of a Fund;
- (ff) **Investment Option** means an investment strategy settled by the Trustee in respect of a Division pursuant to clause 16.2;

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<sup>9</sup> This definition was inserted by Deed dated 25 May 2007

- (gg) **Liabilities of a Division** means:
- (i) any amounts borrowed for the purpose of the Division and remaining owing together with interest thereon;
  - (ii) unpaid administrative costs and expenses of the Division including the fees of the Trustee determined in respect of that Division;
  - (iii) accrued charges owing in respect of or in relation to any of the investments of the Division;
  - (iv) deposits or margin calls required to be paid under any futures contract and any Put Option or call option;
  - (v) any provisions for Tax which in the opinion of the Trustee should be taken into account; and
  - (vi) such other liabilities or other expenditure which in the opinion of the Trustee should be taken into account and which have not otherwise been taken into account in determining the amount of the Liabilities of the Division in any of the preceding paragraphs of this definition;
- (hh) **Life Expectancy Pension** has the meaning given in clause 26;
- (ii) **Life Policy** means a policy which constitutes a life policy for the purposes of the Life Insurance Act 1995;
- (jj) **Lifetime Pension** has the meaning given in clause 26;
- (kk) **Member** means anyone who has been admitted as a Member of a Fund by the Trustee and continues to be a Member and includes former Members who are entitled to receive or are receiving pensions from a Fund or who continue to have rights or to contingently be entitled to receive Benefits from a Fund;
- (ll) **Maximum Splittable Amount** means separately 85% of the amount of Taxed Splittable Contributions and 100% of the amount of Untaxed Splittable Contributions or such other amounts as stipulated in the Complying Fund Requirements and Other Statutory Requirements;<sup>10</sup>
- (mm) **Member's Pension Account** means the account set up for a Member to receive the amount for payment of an Allocated Pension;

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<sup>10</sup> This clause has been inserted by way of a Deed of Amendment dated 30 May 2006.

- (nn) **Net Value of the Assets of a Division** means the Value of the Assets of the Division less the Liabilities of the Division;
- (oo) **Nominated Beneficiary** means the beneficiary nominated by the Member from time to time under clause 30 to receive a Benefit which is payable if the Member dies before retirement”;
- (pp) **Ordinary Resolution** means a resolution passed at a meeting of Members of a particular Division duly convened and held in accordance with the provisions of this Deed by, unless the Deed specifically provides for a poll, a majority of the persons voting thereat upon a show of hands and if a poll is demanded, then by a majority of votes given on such poll;
- (qq) **Other Statutory Requirements** means a requirement or provision contained in any of the following as in force from time to time:
- (i) the Income Tax Assessment Act;
  - (ii) the Superannuation (Resolution of Complaints) Act 1993;
  - (iii) Superannuation Entities (Taxation) Act 1987;
  - (iv) Income Tax (Former Complying Superannuation Funds) Act 1994;
  - (v) Income Tax (Former Non-Resident Superannuation Funds) Act 1994;
  - (vi) Superannuation Guarantee (Administration) Act 1992;
  - (vii) Superannuation Guarantee Charge Act 1992;
  - (viii) Superannuation Supervisory Act 1991;
  - (ix) Superannuation (Rolled-Over Benefits) Levy Act 1993;
  - (x) Superannuation (Resolution of Complaints) Act 1993;
  - (xi) Superannuation Contributions Tax (Assessment and Collection) Act 1997;
  - (xii) Corporations Act;
  - (xiii) Family Law Act;
  - (xiv) Privacy Act and the National Privacy Principles;
  - (xv) any regulations made under any of those Acts; and

- (xvi) any other law of the Commonwealth of Australia or any State or Territory as in force from time to time that may be applicable to the operation of the Fund;
- (rr) **Part** means a Part set out in Section Four of this Deed;
- (ss) **Pension** means a Lifetime Pension, a Life Expectancy Pension, an Allocated Pension or a Pension payable on other terms which allow the benefit to be taken to be a pension for the purposes of the SIS Act;
- (tt) **Pension Standards** means the standards for annuities and pensions in Part 1A of the SIS Regulations as in force from time to time and any substitute standards which must be met if a benefit is to be taken to be a pension or annuity for the purposes of the SIS Act;
- (uu) **Plan** means a plan established under clause 3A.<sup>11</sup>
- (vv) **Policy Committee** means the Committee established in respect of a group of standard employer sponsored Members of a Division in accordance with clause 15;
- (ww) **Primary Beneficiary** means a Member who is entitled to be paid a Pension or who is receiving a Pension;
- (xx) **Proper Authority** has the meaning given to that expression in the *Corporations Act* or substitute or replacement therefore;
- (yy) **Put Option** means a Put Option Contract under which a taker has the right in accordance with the Contract or in accordance with the Articles, Rules, By-Laws and Regulations of a relevant securities exchange to require the writer of the Option to purchase a fixed quantity of an authorised investment upon lodgment of an exercise notice in accordance with the Contract or the Rules whether or not the Contract is quoted or traded on the securities exchange;
- (zz) **Regulated Superannuation Fund** has the meaning given in the SIS Act;
- (aaa) **Regulator** means, where applicable, APRA, ASIC, the ATO, or any other competent administrative body or authorised official;
- (bbb) **Retired** means the time when a Member is taken to have retired under clause 25 and retirement has the same meaning;

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<sup>11</sup> This definition was inserted by Deed dated 25 May 2007

- (ccc) **Reversionary Beneficiary** means the beneficiary nominated by the Member (Primary Beneficiary) at the commencement of payment of a Pension to the Member who is to receive a pension as a Reversionary Beneficiary if the Primary Beneficiary dies or the beneficiaries who are to receive a Pension as Reversionary Beneficiaries in succession;
- (ddd) **SIS Act** means the *Superannuation Industry (Supervision) Act 1993* as in force from time to time and any substitute or further legislation in force from time to time which provides for prudent management of superannuation funds and the supervision of entities engaged in the superannuation industry;
- (eee) **SIS Regulations** means the regulations or any of the regulations from time to time made under the SIS Act;
- (fff) **Special Resolution** means a resolution passed at a meeting of Members of a particular Division duly convened and held in accordance with the provisions of this Deed by a majority consisting of not less than three-fourths of the persons voting on the resolution upon a show of hands and if a poll is demanded then by a majority consisting of not less than three-fourths of the votes given on the poll;
- (ggg) **Splittable Contribution** means a contribution to the Fund or such other amount stipulated under the Complying Fund Requirements and Other Statutory Requirements allocated on or after 1 January 2006 but does not include:
- (i) an amount that has been rolled over or transferred to the Fund;
  - (ii) an amount that has been allotted to or rolled over within the Fund due to a previous contributions splitting application under the Complying Fund Requirements and Other Statutory Requirements;
  - (iii) a lump sum payment from an eligible non-resident non-complying superannuation fund;
  - (iv) a CGT exempt eligible termination payment received pursuant to the small business retirement exemption under the Income Tax Act;
  - (v) such other amounts as prescribed by the Complying Fund Requirements and Other Statutory Requirements.<sup>12</sup>

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<sup>12</sup> This clause has been inserted by way of a Deed of Amendment dated 30 May 2006.

- (hhh) **Spouse**<sup>13</sup> has the meaning ascribed to that term in the Superannuation Industry (Supervision) Act 1993.
- (iii) **Taxed Splittable Contribution** is a contribution to the Fund which is taxable under the Income Tax Act or such other amounts stipulated by the Complying Fund Requirements and Other Statutory Requirements;<sup>14</sup>
- (jjj) **Tax or Taxes** means any tax payable by the Trustee with respect to a Fund under the Income Tax Assessment Act or under the Superannuation Contributions Tax (Assessment and Collection) Act 1997 or any other tax, charge, levy, impost or duty (including any stamp duty or GST) which may be payable by the Trustee with respect to a Fund or any part of it or with respect to any transaction which The Trustee may enter into with respect to a Fund, under any other law of the Commonwealth or under any law of any State or Territory of the Commonwealth;
- (kkk) **Total Account Balance** means the balance standing to the credit of the person's Members Account;
- (lll) **Total and Permanent Disablement** has the same meaning as is contained in any Life Policy taken out by the Trustee as Trustee of a Fund under which a benefit is payable in the event that a Member covered by that policy suffers total and permanent disablement and any determination by the relevant insurer as to whether or not a Member is so disabled under the terms of that policy that a benefit is payable under the policy in respect of the total and permanent disablement of that Member will be final and binding on all interested persons for the purposes of this Deed. However, if a Member is entitled to a Benefit if they suffer total and permanent disablement and there is no Life Policy taken out by the Trustee covering the Member for that contingency, or there is no relevant definition in the policy taken out by the Trustee, or if it is necessary to ensure compliance with the Complying Fund Requirements that the Trustee consent to the determination or exercise the Trustee's own discretion in relation to the matter, then a Member will be deemed to suffer total and permanent disablement if the Member has in the opinion of the Trustee become incapacitated through illness, accident or injury to such an extent as to render it unlikely that the Member will be able to resume his usual occupation or any occupation of a similar nature. Before forming that opinion, the Trustee may have regard to medical certificates, medical opinions, other medical evidence regarding the medical condition of the Member concerned and

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<sup>13</sup> This definition was replaced by way of a Deed of Amendment dated 23 February 2009.

<sup>14</sup> This clause has been inserted by way of a Deed of Amendment dated 30 May 2006.

may have regard to any other reports or information which the Trustee considers appropriate in all the circumstances;

- (mmm) **Trustee** means the Trustee for the time being of a Fund;
- (nnn) **Untaxed Splittable Contribution** is a contribution made to the Fund which is not a taxable contribution under section 274 of the Income Tax Act or such other amounts stipulated by the Complying Fund Requirements and Other Statutory Requirements;<sup>15</sup>
- (ooo) **Value** means in respect to the assets of a Fund, the value determined by the Trustee having regard to the nature and characteristics of the various assets which make up a Fund as may apply at the date of determination. Unless otherwise decided by the Trustee the basis for determination of the value will generally include the methods of valuation set out below:
- (i) in respect of any securities listed on a securities exchange, the value is the last sale price recorded on the official list of the exchange during a period of one month ending on the last business day before the day on which the value is to be determined, or if no sale has been recorded during the period of one month, or the Trustee otherwise decides, then the value fixed by an approved valuer;
  - (ii) in respect of any shares in an unlisted corporation the value decided by the Trustee after receipt of a valuation from an approved valuer;
  - (iii) in respect of any loan securities that are not listed on a securities exchange, the value is the face value plus accrued interest or if the Trustee thinks it appropriate, the value determined by an approved valuer;
  - (iv) for land the value is the cost price including all acquisition costs for the period of three years after the date of acquisition of the land and after that the value is the value set out in a valuation by an approved valuer made not more than three years before the date of the determination of the value by the Trustee or at any other time which the Trustee may require;
  - (v) for bills of exchange and promissory notes, the value is their likely realisable value;

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<sup>15</sup> This clause has been inserted by way of a Deed of Amendment dated 30 May 2006.

- (vi) for units in a managed investment scheme which is not listed, the value is the price at which the responsible entity is required to repurchase that unit or the constitution or other documents relating to the Scheme;
  - (vii) for any future contract, the value is the net profit or loss after making all allowances the Trustee considers appropriate which would have been realised in respect to that contract if the contract had been closed on the date of the valuation or if the Trustee thinks fit, the value determined by an approved valuer;
- (ppp) **Value of the Assets of a Division** means in respect of the Division the total Value on a particular day of the Assets of the Division.

### 1.3 **General**

- (a) Words importing the singular include the plural and vice versa. Words importing gender include all other genders;
- (b) References to laws, codes, statutes and regulations include all variations and amendments to those laws and any law, codes, statutes or regulations passed or otherwise brought into operation in substitution for them;
- (c) References to a clause, schedule, rule, paragraph or annexure are to be construed as references to a clause, schedule, rule, paragraph or annexure to this deed;
- (d) Headings, captions and titles used in the deed and this Deed are for convenience only and are not to be used to interpret the terms of the Deed or this Deed;
- (e) References to a person include reference to a body corporate, association, firm, government or governmental authority;
- (f) References to a body include; that body as reconstituted, renamed or replaced or if its powers or functions or relevant powers and functions are transferred to any other body or person that other body or person.

### 1.4 **Interpretation of this Deed**

Unless otherwise expressly provided and subject to any requirements of the Complying Fund Requirements, any question or dispute regarding the interpretation of the Deed and of any rights, benefits, duties or liabilities arising under this Deed is to be decided by the Trustee and the decision



of the Trustee is binding upon all of the Members and all other persons who have an interest in each of the Funds set up under this Deed.

**1.5 Severance**

If any provision of this Deed are held to be invalid in whole or in part or is required to be limited or read down in order to be valid or in order to comply with any of the Complying Fund Requirements, the provision is to be severed to the extent of the invalidity but the remaining parts of the provision will continue to be in full force and effect.

**1.6 Proper Law**

The rights, liabilities and obligations of the Trustee, the Employer-Sponsors and the Members in relation to each other shall be governed by the law of the State of Victoria.

## **SECTION TWO**

### **2. NATURE OF DIVISIONS WITHIN THE FUND**

- 2.1 Each Division which is set up under this Deed is a separate Regulated Superannuation Fund and is a separate trust. Each Division is to be treated and will operate as a separate entity for the purposes of s184-1 of the A New Tax System (Goods & Services Tax) Act 1999.
- 2.2 The Trustee must maintain each Division as a separate Regulated Superannuation Fund.
- 2.3 All of the property received in relation to a Division is to be held by the Trustee as a separate trust fund and is to be held solely for the Members of the Division and the persons claiming an interest in a benefit provided from a Fund which constitutes the Division through a Member of the Division.
- 2.4 The property held by the Trustee as trustee of a Division is not available to meet the liabilities of any of the other Divisions set up under this Deed nor is that property to be used to meet any payments due to Members of any other Division.
- 2.5 The Trustee is to be the Trustee of each Division set up under this Deed.
- 2.6 The rules set out in Section Three apply to each Division and the Superannuation Fund set up under each Division is to be administered in accordance with those rules.
- 2.7 Each Division may offer and provide to Members of the Division the Benefits set out in any one or more of the Parts of the Plan set out in Section Four of this Deed and the Rules set out in the relevant Part will apply with respect to all Members of a Division entitled to receive Benefits which are set out in the Part. A Division may provide Benefits under and participate in or apply or adopt more than one of the Parts or the Plan set out in Section Four.
- 2.8 Each separate superannuation fund set up as a Division under this Deed starts on whichever of the following first happens:
  - (a) the date of payment to the Trustee of a contribution or other money or property in relation to a Division in accordance with the terms and conditions of this Deed and the rules relating to that Division; or

- (b) the date specified in the resolution by the Trustee to establish the Division.

Each Division will continue until it is terminated under clause 7.

- 2.9 The rights of Employer-Sponsors with respect to a Division and the entitlements of Members to benefits from a Division are to be governed by the provisions of this Deed and by provisions relating to the Divisions set out in any Rules relating to that Division.
- 2.10 Employer-Sponsors and Members may participate in more than one Division.
- 2.11 The investment of the assets of one Division in another Division is not a breach of this Deed.
- 2.12 The Trustee may establish new parts in addition to those set out in Section Four of this Deed by executing a supplemental trust deed under which that new part is added to Section Four.
- 2.13 The Trustee may establish subdivisions within a Division.<sup>16</sup>

### **3. BADGED DIVISIONS**

- 3.1 The Trustee may enter into arrangements with third parties (sponsors) for the sponsor to offer participation in a Division ('a badged Division'). A Disclosure Document with respect to participation interests in a badged Division may with the approval of the Trustee carry the name of the sponsor or a name chosen by the sponsor and approved by the Trustee for the badged Division.
- 3.2 The provisions of this Deed apply to a badged Division in the same way as they apply to any other Division.

### **3A PLANS<sup>17</sup>**

- 3A.1 The Trustees may establish one or more Plans within the Divisions of the Fund.
- 3A.2 A Plan is not a separate Regulated Superannuation fund.
- 3A.3 The rules governing a Plan will be the Rules set out in the relevant Part and such other rules that the Trustee may declare to apply to the Plan which may apply in addition to or in substitution for the Rules in the relevant Part as the Trustee may determine.

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<sup>16</sup> This clause was inserted by Deed dated 25 May 2007

<sup>17</sup> This clause was inserted by Deed dated 25 May 2007

- 3A.3 The Trustee may adopt a name for a Plan.
- 3A.4 The Trustee may adopt and maintain an investment strategy and objectives specifically for a Plan and may hold particular assets for a Plan.
- 3A.5 The Trustee may segregate assets of a Plan from the assets of any other Plans or from the assets held for other Members in the Division in which the Plan is maintained.
- 3A.6 The following clauses apply as if references to "Division" were references to "Plan":
- (a) clauses 7.4 to 7.10 (inclusive)
  - (b) clause 8
  - (c) clause 15
  - (d) clause 21.2
  - (e) clause 33.1
- 3A.6 The Trustee may do anything that the Trustee considers necessary or desirable in order to properly administer a Plan.

#### **4. OFFERING OF SUPERANNUATION INTERESTS IN A DIVISION AND DISCLOSURE OF INFORMATION**

- 4.1 A person can only become an Employer-Sponsor of a Division or a Member of a Division pursuant to an application made to the Trustee. Any application by an Employer or an eligible person to participate in a Division must be made in the form approved by the Trustee and include the information required under Section Three and the Rules set out in the relevant Part and be lodged with the Trustee at its registered office or at whatever place or places as the Trustee may from time to time decide.
- 4.2 The Trustee must not accept an application from a person to participate in a Division unless the Trustee has given to the applicant a Disclosure Document and any other information, statements or reports which are required to be given to the applicant by the Trustee under Part 19 of the SIS Act, any other relevant Complying Fund Requirement, or any Other Statutory Requirements.
- 4.3 The cooling off provisions set out in Part 19 of the SIS Act and any similar provisions contained in any legislation or Other Statutory Requirements applying to a Division which replaces those provisions are to be treated as being set out and included in this Deed and the Trustee must fully comply with those provisions.

- 4.4 All application money and other monies received by or deposited with the Trustee in respect of an application to participate in a Division must be held by the Trustee upon trust for the applicant until the Trustee decides to approve the application to participation in the Division. The Trustee must comply with all of the provisions in the SIS Act, the SIS Regulations and Other Statutory Requirements relating to how application money held on trust is to be dealt with.
- 4.5 If any application money is received by the Trustee without an accompanying completed application form, the Trustee will as soon as practicable return that application money to the applicant or will attempt to obtain a properly completed application from the applicant.
- 4.6 Where application monies are received by the Trustee without a properly completed application form and a properly completed application form is not given to the Trustee within 30 days after the money is received by the Trustee, the Trustee must return the application money and any interest to the person who has paid the money to the Trustee.
- 4.7 The Trustee may in its complete discretion reject or accept any application by an Employer or an Eligible Person to participate in a Division without giving any reason for its decision. The Trustee must not accept an application for participation in a Division unless any relevant prerequisites for acceptance of an application for participation as set out in the Rules of the relevant Division have been fully satisfied. The Trustee must decide whether to accept or reject an application within one month after the application is received and any application not accepted within that period is to be treated as being rejected.
- 4.8 When the Trustee accepts an application for participation in a Division, the Trustee must:
- (a) ensure that the applicant is given a participation number and that the applicant's name is entered in the relevant register of Members or register of Employer-Sponsors;
  - (b) that any required Members' account or other account is established in respect of each Member;
  - (c) any Employer-Sponsor receives confirmation that they have been admitted to participate as an employer in the relevant Division; and
  - (d) the Member is given all other information required to be given to a Member under the Complying Fund Requirements or Other Statutory Requirements including summary of the benefits to which the Member will be entitled from the Division and any other details the Trustee considers appropriate.

## **5. REGISTERS**

### **5.1 Register of Members**

The Trustee must keep a register of Members.

The Trustee must record in the register:

- (a) the name, current residential and business address, date of birth, for the Member, and where an Employer-Sponsor is or intends to make contributions for the Member details of that Employer-Sponsor;
- (b) details of the Division to which the Member has been admitted;
- (c) the date on which the name of the Member was first entered on the register;
- (d) the date when a Member ceased to be a Member; and
- (e) any other information about a Member which the Trustee thinks appropriate.

### **5.2 Register of Employer-Sponsors**

The Trustee must keep a register of Employer-Sponsors.

The Trustee must record in the register:

- (a) the name, current business address, and the participation number issued by the Trustee to the sponsor;
- (b) details of the Division in which the Employer-Sponsor has been admitted and to which it will make contributions;
- (c) the date on which the Employer-Sponsor was admitted to participate in the Divisions;
- (d) the date when a Member ceased to be an Employer-Sponsor of the Division;
- (e) any other information which the Trustee thinks appropriate.

5.3 A Member or an Employer-Sponsor who is participating in a Division must promptly notify the Trustee of any change of name or address. The Trustee must on receiving satisfactory proof of the change enter the change in the relevant register.

5.4 The Trustee must ensure that the Register of Members is audited at intervals of not more than 12 months.

- 5.5 The Trustee is not obliged to record any trust on any Register unless required by law to do so.

## **6. TRANSFER OF ENTITLEMENTS BETWEEN PARTS**

The Trustee may in its absolute discretion transfer between Parts, part or all of the benefits or benefit entitlements and any applicable assets and may take any other steps to carry into effect such a transfer. The Trustee must in accordance with Complying Fund Requirements advise any persons affected by such a transfer.

## **7. TERMINATION OF THE DIVISIONS**

- 7.1 The perpetuity period applicable to the trusts and dispositions contained in this Deed is the period or eighty (80) years commencing on the date of execution of this Deed. The Divisions, unless sooner determined under the provisions of this Deed, will terminate and be wound up on the expiration of that period.
- 7.2 If any legislation is enacted having the effect in the opinion of the Trustee of materially diminishing the amount of income of any or all of the Divisions available for distribution to the Members and the Trustee, the Division will terminate and be wound up on that date.
- 7.3 If the office of the Trustee of a Division becomes vacant and a new Trustee is not duly appointed within one (1) month of the vacancy occurring the Division shall terminate and be wound up.
- 7.4 If the Trustee determines that a Division is to be terminated, that Division must terminate and be wound up.
- 7.5 Upon the termination of a Division the Trustee shall hold the assets of the Division upon trust for the Members and the Division shall be wound up.
- 7.6 The Trustee must give notice to each Member of the Division that the Division is to be wound up on a specified date (the Closing Date) and as from the Closing Date no further contributions (other than arrears) may be made to a Fund and that all arrears of contributions must be paid immediately.
- 7.7 As from the Closing Date the Trustee must:
- (a) immediately make a call for any arrears of contributions in respect of the Division and not, except in the case of contributions received in response to a call, accept further contributions to the Division; and

- (b) credit and/or debit, as the case may be, to each relevant Member's account in a manner the Trustee as being in its opinion fair and equitable, the balance of the expense reserve account maintained in respect of that Division after payment of all expenses associated with the termination of the Division.

7.8 Upon the termination of a Division the Trustee must sell call in and convert to cash all of the assets of the Division and subject to the provisions of this clause allowing postponement or retention of assets to meet liabilities, must complete the realisation within 180 days. The Trustee may transfer any investment of the Division to the trustee of any other trust fund including another Division (whether or not the Trustee is in any way associated with such other trust or Division) on receiving cash equivalent to the market value of such investment at the date of transfer.

7.9 The Trustee may retain for so long as it thinks fit such part of the investments of the Division as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Division or of any investments of that Division. Any investments or money so retained which are ultimately found not to be needed to meet any liabilities will remain subject to the conditions of this Deed requiring conversion and distribution.

7.10 The Trustee shall retain out of any moneys in its hands full provision for and to pay thereout all costs charges expenses liabilities (whether actual or contingent) claims and demands incurred made or expected by the Trustee in connection with the Division or arising out of the termination of the Division including the fees of any agents solicitors bankers accountants or other persons whom the Trustee may employ in connection with the termination of the Division and is entitled out of the moneys so retained to be indemnified and saved harmless against any of those costs and charges expenses claims and demands provided that any moneys so retained to the extent that they are ultimately found not to be so required shall remain subject to the conditions of this Deed for distribution to Members.

## **8. DISTRIBUTION ON TERMINATION OF A DIVISION**

8.1 The Trustee when it has completed the realisation of the investments of the Division distribute to Members the net proceeds of realisation together with all other cash forming part of the Division in the respective proportions that the respective balances in each relevant Member's account as at the date of termination of the Division bears to the total of all such amounts realised or held on behalf of the Division by the crediting of such amount available to be distributed to the relevant Member's accounts.



- 8.2 After receiving the advice of an Actuary if one has been appointed to the Division the Trustee at its discretion must deal with the benefits and entitlements which have accrued to Members under this Deed at the Closing Date in one or more of the following ways:
- (a) by paying a benefit to the Member or the Dependants of the Member;
  - (b) by rolling over the benefit within the superannuation system;
  - (c) by transferring the benefit to another regulated superannuation fund (as long as the Trustees of that fund are required under the relevant Trust Deed to preserve the Preserved Benefits included in the amount transferred and the relevant Member gives his consent in writing);

BUT the Trustee must not deal with those benefits and entitlements in a manner which would contravene any of the Complying Fund Requirements.

- 8.3 The Trustee may pay the benefits payable on winding up in any form and under any arrangements which the Trustee considers appropriate in the circumstances and every Member will accept the benefits allotted to him by the Trustee in full discharge of all claims in respect of a Fund and will have no further claims at all in respect of any rights or benefits under this Deed or otherwise in connection with or arising out of their interest in a Fund and all decisions of the Trustee in respect of any benefit will be final and conclusive.

- 8.4 Where the proceeds of the investments of a Division realised are subject to a cashing restriction, the Trustee must:
- (a) notify each Member concerned in writing of the details of the cashing restriction;
  - (b) request each Member concerned in writing to nominate to the Trustee within one month of receipt of the request the regulated superannuation fund or approved deposit fund to which the proceeds are to be transferred or applied (“the nomination”),

The Trustee must not, subject to the following provisions of this clause, transfer the proceeds to a regulated superannuation fund, approved deposit fund or another Division unless:

- (c) so directed by the Member’s nomination; and
- (d) unless the regulated superannuation fund, approved deposit fund or Division has the appropriate provisions to ensure that the

amount subject to the cashing restriction is not dealt with other than as permitted by the Complying Fund Requirements.

The Trustee must use its best endeavors to obtain a nomination upon which the Trustee can act in accordance with the terms of this Deed. Where no nomination is delivered in respect of a Member, or the Trustee forms the opinion that the Member cannot be located the Trustee may at its discretion deal with the Member's interest in the Division in such manner as is required by the Complying Fund Requirements.

- 8.5 The Trustee may from time to time and prior to completion of the realisation of investments of a Division make such interim distributions to Members on account of their respective entitlements as the Trustee determines.
- 8.6 Each of those distributions shall be made only against delivery to the Trustee of such form of receipt and discharge as may be required by the Trustee.
- 8.7 The Trustee may postpone the sale calling in and conversion of any part of the assets of the Divisions for such time as it thinks is desirable so to do in the interests of the Members and will not be responsible for any loss attributable to such postponement.
- 8.8 If the Trustee decides to wind up a Division because there are no Members left in the Division the assets of the Division are to be distributed in any way allowed by the Complying Fund Requirements and subject to those Requirements the Trustee in its discretion may distribute the assets remaining in the Division to any former Members of the Division or to any of the Dependants or to the legal personal representative of any Member who has died or to any Employer-Sponsor as a refund of contributions.
- 8.9 If after the winding up of the Division and the distribution of the assets as set out earlier in this clause any assets remain in the Division ("surplus assets") the surplus assets are to be distributed to the Members or former Members of the Division or their Dependants or any of them or refunded to any relevant Employer-Sponsor or otherwise distributed in a manner allowed by the Complying Fund Requirements as the Trustee in its discretion may decide after receiving the advice of any Actuary appointed to the Division but the Trustee may not distribute the surplus assets in any way which would contravene any of the Complying Fund Requirements.

## **9. RESOLUTION OF DISPUTES**

### **9.1 Trustee's Decision is Binding**

If any doubt or dispute arises as to the interpretation of any provision of this Deed or as to the rights or obligations of a Member or any other

person under this Deed the decision of the Trustee shall be final and binding (except to the extent otherwise expressly provided in this Deed or otherwise provided by the Complying Fund Requirements).

## 9.2 Resolution of Disputes

The Trustee must (unless the Complying Fund Requirements do not require that it do so with respect to a Division) ensure that there are arrangements in force:

- (a) under which:
  - (i) a Member or any other person with a beneficial interest in a Division which is a regulated superannuation fund may inquire into, or complain about, the operation or management of the Division in relation to that Member or that other person;
  - (ii) inquiries or complaints will be considered and properly dealt with within 90 days after they were made; or
- (b) which otherwise comply with the Complying Fund Requirements in relation to the conciliation, arbitration and review of enquiries made by Members.

## 10. MISCELLANEOUS

### 10.1 Retention of Documents

The Trustee must:

- (a) keep, and retain so long as they are relevant and in any event for at least ten years, copies of:
  - (i) all reports that were given in the same form (apart from differences relating to the names and addresses of the persons to whom the notices were given) to all Members; and
  - (ii) all applications; and
  - (iii) such other material as is required by the Complying Fund Requirements; and
- (b) make those copies available for inspection by a Member of the staff of the Regulator if requested to do so by the Regulator.

### 10.2 Inspection of Deed

A copy of this Deed must at all times during usual business hours be made available by the Trustee at its registered office for inspection by Members and any other persons who are entitled to receive from the Trustee a copy of this Deed.

## **SECTION THREE**

The provisions set out in this Section Three apply to each of the Regulated Superannuation Funds set up as a Division of the Plan under this Deed but if there is any conflict between a provision in this Section and the Rules for a Part set out in Section Four the Rules for the Part are to prevail over any conflicting provision in this Section.

A reference in this Section to “a Fund” is a reference to each separate superannuation fund set up as a Division under this Deed.

### **11. EACH FUND MUST SATISFY THE COMPLYING FUND REQUIREMENTS**

- 11.1 Even though it may conflict with another provision of this Deed the Trustee must exercise all of the powers and discretions given to it under this Deed subject to the provisions, restrictions, limitations and requirements contained in the Complying Fund Requirements and all of the provisions of this Deed and this Deed are to be read and the powers and discretions relating to the administration of a Fund and the entitlement of Members and other persons to receive benefits from a Fund are at all times to be exercised subject to the provisions, limitations, restrictions and requirements contained in the Complying Fund Requirements.
- 11.2 The Trustee is authorised to do all acts, matters and things which are necessary or which the Trustee considers desirable to ensure that a Fund does not contravene any of the Complying Fund Requirements.
- 11.3 If there is any conflict between any provision of this Deed and any of the Complying Fund Requirements. the provisions of the Complying Fund Requirements are to prevail over the conflicting provisions of this Deed but only to the extent of that conflict.
- 11.4 Where the Complying Fund Requirements expressly require that a provision set out in those requirements be included in this Deed, that provision is to be treated as being included from the date when the Complying Fund Requirements require that the Rules include the provision if a Fund is to remain a complying superannuation fund.
- 11.5 The Trustee in administering a Fund and in exercising any of its powers with respect to a Fund may also comply with any of the Other Statutory Requirements even though it is not necessary to comply with them in order for a Fund to be a complying superannuation fund and the Trustee is not to be taken to have committed any breach of trust by complying with any of the Other Statutory Requirements.

- 11.6 If any doubt or dispute arises as to the meaning, application or effect of any of the Complying Fund Requirements or the Other Statutory Requirements in so far as they affect the administration or co-operation of a Fund or the payment of contributions to a Fund or benefits from a Fund or if there is a conflict or apparent conflict between any of the Complying Fund Requirements, the decision of the Trustee regarding that matter will be final and binding on all interested persons. When applying any of the Complying Fund Requirements the Trustee may have regard to any ruling, guideline, determination, circular or announcement relating to the interpretation, operation or administration of any of the Complying Fund Requirements and may have regard to any proposed changes to any of them which are announced by or on behalf of any relevant Minister of the Crown and/or Executive Government.
- 11.7 The Trustee will not be in breach of Trust if there is a contravention of any of the Complying Fund Requirements and a Fund does not fail the culpability test in relation to the contravention or the contravention does not result in the Regulator issuing a notice stating that a Fund is not a complying superannuation fund in relation to the year of income in which the contravention occurred or in the Regulator revoking a notice previously issued by the Regulator stating that a Fund is a complying superannuation fund for that income year.
- 11.8 The Trustee must ensure that a Fund is maintained solely for one or more of the core purposes set out in the SIS Act or for one or more of those core purposes and for one or more of the ancillary purposes set out in that Act.

If there is a conflict between any provision of this clause and any other provision of this Deed, the provisions of this clause are to prevail.

## **12. REGULATED SUPERANNUATION FUND**

Each Division is to be a separate Regulated Superannuation Fund and the Trustee must give to the Regulator within the period provided in the Complying Fund Requirements, a notice in the required form, electing that the SIS Act is to apply in relation to each Division.

## **13. THE TRUSTEE**

- 13.1 The Trustee of each Division must be a Constitutional Corporation which is an RSE Licensee.<sup>18</sup>
- 13.2 Subject to agreement as to a shorter period, the Trustee may resign as Trustee of a Division by giving at least six months notice of intention to

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<sup>18</sup> This clause has been amended by way of a Deed of Amendment dated 30 May 2006.

retire as Trustee to all of the Members of the Division and at the end of the period of the notice executing a deed under which it retires and appoints another Constitutional Corporation which is an RSE Licensee as the Trustee of the Division in its place.<sup>19</sup>

- 13.3 The Members of a Division by a Special Resolution may decide that the Trustee ("first Trustee) should be removed and replaced and as long as the Members also by a Resolution approve another Constitutional Corporation which is an RSE Licensee ("new Trustee") for appointment as the Trustee of the Division in place of the first Trustee, the first Trustee must within 14 days after the date on which the new resolutions are passed by the Members resign as the Trustee and by a Deed appoint the new Trustee as the Trustee of the Division in its place.<sup>20</sup>
- 13.4 The Regulator may suspend or remove a Trustee and appoint an acting trustee in accordance with the provisions of Part 17 of the SIS Act.
- 13.5 The Trustee must when it ceases to be a Trustee of a Division for any reason cause the assets of the Division to be transferred to the new trustee for that Division and must deliver to the new Trustee all books, documents and records (however they may be kept) and all other information and property relating to the Division. The reasonable costs and expenses of doing this are expenses of the Division.
- 13.6 Any delay in the appointment of a new Trustee will not invalidate the appointment. Any act or determination by a Trustee is valid, even though a defect may later be found in the appointment of that Trustee.

## **14. ADMINISTRATION OF A FUND**

### **14.1 Powers of the Trustee**

- (a) The Trustee has complete management and control of a Fund and of all proceedings matters and things connected with it and may execute any contracts deeds and documents and do any other things which it considers necessary for the purpose of securing the benefits to be provided by a Fund or carrying out its obligations under this Deed or for the purpose of ensuring a Fund is and at all times remains a complying superannuation fund.
- (b) The Trustee in its absolute and uncontrolled discretion may exercise all or any of the authorities powers and discretions given to it under this Deed and may exercise those authorities powers and discretions from time to time and at any time or may refrain from exercising all or any of them from time to time or at all.

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<sup>19</sup>This clause has been amended by way of a Deed of Amendment dated 30 May 2006.

<sup>20</sup> This clause has been amended by way of a Deed of Amendment dated 30 May 2006.

- (c) The Trustee may act on the advice or opinion of any professional person or expert even if the advice or opinion has not been obtained by the Trustee and the Trustee will not be responsible for any loss occasioned by acting on that advice in good faith as long as the Trustee is satisfied before acting on the advice that the advice is relevant to the circumstances of a Fund but subject always to the Complying Fund Requirements and Other Statutory Requirements.<sup>21</sup>
- (d) Whenever it is necessary for the Trustee to decide questions of fact it may act upon whatever proofs or presumptions as it may consider satisfactory whether they be strictly legal proofs or legal presumptions or not.
- (e) The Trustee may open and operate any bank accounts which it thinks desirable and all cheques and other negotiable or transferable instruments and all receipts for money paid to a Fund must be signed, drawn, accepted, endorsed or otherwise executed in the manner which the Trustee may from time to time determine.
- (f) Without in any way limiting the generality of the powers of the Trustee apart from this sub-clause the Trustee may institute, prosecute, defend and execute legal proceedings of any kind and in any Court including but not limited to proceedings to recover possession of all or any part of any property or to sue for and recover rent or damages or to enforce any contract with power to abandon, settle, compromise and release those proceedings when deemed expedient.
- (g) The Trustee has power to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against a Fund.
- (h) The Trustee has power to make and give receipts, releases and other discharges for money payable to a Fund and for the claims and demands of a Fund.
- (i) The Trustee may insure against any liability of the Trustee or any of the directors or officers of the trustee in any way relating to a Fund or its administration, or the liability of a Fund to indemnify or reimburse the Trustee or its directors under this clause.

#### 14.2 **Appointment of Administrator and delegation by Trustees**

- (a) The Trustee may appoint an Administrator to administer a Fund.

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<sup>21</sup> This clause has been amended by way of a Deed of Amendment dated 30 May 2006



- (b) The Trustee may delegate to the Administrator on any terms which the Trustee thinks fit any of the powers, duties or discretions conferred upon it by this Deed as long as it does not contravene any of the Complying Fund Requirements by delegating those powers. The Trustee will not be liable for any loss occasioned by any omissions or acts of the Administrator to whom it delegates any powers, duties or discretions unless the omission or the acts have resulted from fraud, wilful misconduct or a known breach of trust, by the Trustee. The Trustee may at any time revoke any delegation or vary the terms of any delegation of any of the Trustee's powers under this clause.
- (c) The Trustee is not bound to act personally but may employ and remunerate accountants, actuaries, advisers, auditors, bankers, barristers, brokers, consultants, custodian trustees, investment trustees, managers, solicitors and other persons, firms, corporations or companies as it may consider desirable for the proper administration of a Fund in accordance with this Deed. The Trustee will not be liable for the neglect, default or misconduct of any adviser, person, firm, corporation or company engaged by it or for allowing trust funds or securities to remain in the custody, or control of any person for any time however long unless that action is the result of fraud, wilful misconduct or a known breach of trust by the Trustee.

### 14.3 Liability and Indemnity

- (a) The Trustee (and any Director or officer of a Trustee which is a corporation) while purporting to act in the execution of the trusts powers authorities and discretions contained in this Deed will not be liable for any loss which may be suffered by a Fund or by any Member or by a person claiming an interest in a Fund as a result of any act or omission, mistake or error of judgment, or the exercise of any discretion or power conferred on the Trustee or the failure to exercise any discretion or power or any agreement made or document executed by or on behalf of the Trustee UNLESS the loss is caused by:
  - (i) the Trustee's own fraud, wilful misconduct or by the Trustee willfully and knowingly being a party to a breach of trust; or
  - (ii) the Trustee contravening a covenant contained or deemed by the Complying Fund Requirements to be contained in this Deed; or
  - (iii) the Trustee's failure to act honestly; or

- (iv) the Trustee's intentional or reckless failure to exercise the degree of care and diligence that the Trustee is required to exercise.
- (b) Subject to clause 14.3(c) the Trustee (including each director of the Trustee while acting in that Trustee capacity) is entitled to be indemnified and reimbursed out of a Fund for any liability or loss which is incurred by the Trustee while acting as Trustee including the costs of obtaining advice in relation to the performance of the duties and the exercise of the powers of the Trustee.
- (c) A Trustee (or any Director of a Trustee) is not entitled to be indemnified under clause 14.3(b) against:
  - (i) any loss arising from or in relation to a breach of trust where the Trustee failed to act honestly or intentionally or recklessly failed to exercise, the degree of care and diligence that the Trustee was required to exercise; or
  - (ii) any monetary penalty under a civil penalty order made under the SIS Act.
- (d) The rights to indemnity and limitations on liability set out above are subject to any limitations or restrictions set out in the Complying Fund Requirements and the Trustee in addition to any other defence to claim for any loss suffered by a Fund or a Member may rely upon any defence which is allowed under the Complying Fund Requirements.

#### 14.4 **Payment In good faith valid**

Any payment or assignment of a Benefit in good faith to a person believed by the Trustee to be entitled to receive it shall be deemed to be payment or assignment to a person entitled to receive it and shall be a valid discharge to the Trustee of its obligations in respect of the payment or assignment of that Benefit or Drawdown but subject always to the Complying Fund Requirements and Other Statutory Requirements.<sup>22</sup>

#### 14.5 **Remuneration**

The Trustee may pay itself out of the assets of each Division and debit against any expense reserve account maintained for that Division as remuneration for its service, the fees:

- (a) which are set out in any Disclosure Document which is current at the time contributions started to be made to that Division;

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<sup>22</sup> This clause has been amended by way of a Deed of Amendment dated 30 May 2006.

- (b) unless paragraph (c) applies and there was no relevant Disclosure Document, a fee as determined by the Trustee or as otherwise notified by the Trustee in writing to Employer-Sponsors or Members before contributions commenced to be made to the Division; or
- (c) the fee notified in writing by the Trustee to Employer-Sponsors or Members of a Division at least three months after the service of any notice given by the Trustee under paragraph (b).

The Trustee may receive a different fee for each Division. Any Disclosure Document or resolution or notice must set out the amount of the fee or the basis of calculation of the fee.

#### **14.6 Trustee must keep separate account of commission or brokerage**

The Trustee must keep a separate account showing all amounts that are paid or applied directly or indirectly to commission or brokerage to a person in return for that person's admission to a Division or for procuring or agreeing to procure applications to participate in a Division.

#### **14.7 Commission or Brokerage only payable to certain persons**

The Trustee must not pay commission or brokerage in relation to acceptance of applications in relation to a Division unless the person is:

- (a) the holder of a dealer's licence; or
- (b) the holder of a proper authority; or
- (c) an exempt dealer; or
- (d) a registered insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984*; or
- (e) a life insurance company; or
- (f) an accountant, solicitor or an employee of an accountant or a solicitor, a company providing accountancy or legal services or a direct employee of a company or a partner in or an employee of a firm of accountants or solicitors whose principal business is not the giving of advice about securities and that person has stated in writing that the total amount of the brokerage or commission will be rebated to the applicant.

#### **14.8 Expenses**

The Trustee must pay out of a Fund all expenses of and incidental to the management and administration of a Fund.

#### 14.9 Statutory Powers

The powers, authorities and discretions conferred on the Trustee under this Deed are in addition to any powers, authorities and discretions conferred on the Trustee by any statute.

#### 14.10 Covenants by Trustee

The Trustee covenants with the Members:

- (a) to act honestly in all matters concerning a Fund;
- (b) to exercise in relation to all matters affecting a Fund the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- (d) to keep the money and assets of a Fund separate from any money and assets that are held by the Trustee personally or that are money or assets of an Employer-Sponsor or an Associate of an Employer-Sponsor;
- (e) not to enter into any contract or do anything else that would prevent the Trustee from or hinder the Trustee in properly performing or exercising the Trustee's functions and powers;
- (f) if a Reserve Account is kept, to formulate and give effect to a strategy for the prudential management of the Reserve Account, consistent with a Fund's investment strategy and its capacity to discharge its liabilities (whether Actual or contingent) as and when they fall due.

#### 14.11 Information to be provided by the Trustee

The Trustee, within the time and in the form and manner set out in the Complying Fund Requirements and Other Statutory Requirements must:

- (a) give to each new Member all of the information required to be given to them under the Complying Fund Requirements and Other Statutory Requirements;
- (b) give to each Member of a Fund:
  - (i) all information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding his or her benefit entitlements under a Fund

and needs for the purpose of understanding the management of and financial condition of a Fund and the investment performance of a Fund and all other member information and fund information required to be given to them under the Complying Fund Requirements and Other Statutory Requirements;

- (ii) the information concerning events which occur in relation to a Fund which is required to be given to them under the Complying Fund Requirements and Other Statutory Requirements;
- (iii) on request from a Member all of the information which they are required to give to a Member on request under the Complying Fund Requirements and Other Statutory Requirements;
- (c) give to each Member who leaves a Fund all of the information which they must give such a Member under the Complying Fund Requirements and Other Statutory Requirements;
- (d) give to each Employer-Sponsor all of the information which they are required under the Complying Fund Requirements and Other Statutory Requirements to give the Employer-Sponsor on request;
- (e) give to other superannuation entities on transfer of the benefits of a Member, all of the information which they must give to that other entity under the Complying Fund Requirements and Other Statutory Requirements;
- (f) give to each person who makes an enquiry or complaint, the information required to be given to them under the Complying Fund Requirements and Other Statutory Requirements; and
- (g) give to any other person set out in the Complying Fund Requirements and Other Statutory Requirements, the information which they are required to give to that person under the Complying Fund Requirements and Other Statutory Requirements.

#### 14.12 Notices

Notices pursuant to this Deed are deemed to have been properly given and served if delivered or sent by prepaid post addressed to:

- (a) the Trustee:

at the address for the Trustee for service of notices set out in this Deed or at any other address from time to time notified to Members in a Disclosure Document;

(b) an Employer- Sponsor:

at its registered office or at its principal place of business or at its address set out in the Register of Employer-Sponsors.

(c) a Member:

at the place of employment or the place of residence for the Member last known to the Trustee or the Employer-Sponsor.

A notice will be treated as being given on the date when actual delivery would be expected in the ordinary course of post, if posted, and upon transmission if sent by fax or electronic mail.

## **15. POLICY COMMITTEE**

15.1 The Trustee must whenever required by the Complying Fund Requirements take all reasonable steps to ensure that at least one policy committee is established for each group of standard employer sponsored Members of a Division.

### **15.2 Expenses of the Policy Committee**

The Trustee may debit the Member's account maintained for each Member in respect of whom a Policy Committee has been established, an appropriate portion of:

- (a) the 'out of pocket' cost of providing facilities for the Policy Committee to meet;
- (b) the 'out of pocket' costs incurred by the Trustee in attending the meetings of the Policy Committee; and
- (c) the 'out of pocket' costs incurred by the Trustee in providing information to the Policy Committee.

Despite the above, but subject to the Complying Fund Requirements if the Trustee considers it fair and reasonable, the Trustee may, instead of debiting the costs with respect to a Policy Committee against a Member's account, debit those expenses to the expense reserve account for the Division.

### **15.3 Dissolution of a Policy Committee**

A Policy Committee may dissolve itself. If it does this, the Trustee is taken to have complied with the Trustee's duties to establish a Policy Committee under this clause and under the relevant Complying Fund Requirements.

## **16. INVESTMENT STRATEGY AND CHOICE OF INVESTMENT STRATEGY**

### **16.1 Investment Strategy**

The Trustee must formulate and give effect to an investment strategy for each Division that has regard to the whole of the circumstances of a Fund set up by the Division, including but not limited to the matters set out in the Complying Fund Requirements.

### **16.2 Member Investment Choice**

- (a) The Trustee at its discretion may give to Members (or to the Members in a class of Members) a choice of 2 or more investment strategies for their interest in a Fund. ('Investment Options'). If it decides to do this, the Trustee must create sub-funds within a Fund and must formulate and give effect to a separate and distinct investment strategy for each of those sub-funds. Each of these sub-funds must have separately identifiable assets which meet the descriptions of the assets to be held within that sub-fund in accordance with the separate investment strategy adopted for it.
- (b) When it creates sub-funds with separate investment strategies the Trustee must also establish and publish the procedure under which Members can choose one or more investment strategies of Investment Options for the contributions paid to a Fund for them and for their interest in a Fund. Under these procedures each Member (or each Member of a class of Members) must be offered a choice of two or more investment strategies from which they may choose a strategy or, at the Trustees discretion, a combination of strategies for the investment of their interest in a Fund. The procedures must set out the method by which and the times when a Member may choose or change its choice of an investment strategy for their interest in a Fund and the circumstances under which a Member may choose more than one investment strategy for the Member's interest in a Fund.
- (c) The Trustee must also decide which of the investment strategies adopted by it will be the default investment strategy which the Trustee will adopt for investment of a Member's interest in a Fund if the Member does not choose an investment strategy for their interest in a Fund within the time provided under the procedures published by the Trustee.
- (d) The Trustee must observe all of the relevant Complying Fund Requirements when it is formulating the different investment strategies for the sub-funds and when it is deciding the procedures under which the Members (or to the Members in a class of Members) may choose one or more investment strategies for their

interest in a Fund and may vary their choice of investment strategy.

- (e) The Trustee must, in any Disclosure Document when offering a choice of investment strategy to each Member, give the Member details of the investment objectives of each of the strategies adopted for the sub-funds and all other information which the Trustee reasonably believes that a person would reasonably need for the purpose of understanding the effect of and any risk involved in each of the investment strategies. The Trustee must also give to each Member all of the other information which is required under the Complying Fund Requirements to be given to them when they are choosing an investment strategy for their interest in a Fund.
- (f) If the Trustee decides to offer a choice of investment strategies to Members of a Division each Disclosure Document issued to a person applying to become a Member of the Division must set out the choice of investment strategies which may be chosen.
- (g) The Trustee must keep separate accounts and records relating to each sub-fund for which it has adopted a separate investment strategy and must maintain all-other records in relation to that sub-fund as will enable the Trustee to administer that sub-fund in accordance with the requirements of this Deed and will enable it to satisfy all of its obligations relating to administration of a Fund set out in the Complying Fund Requirements.
- (h) In this clause "class of Members" means any group of Members of a Fund whom the Trustee separately identifies as having a common attribute which is not shared by all of the Members of a Fund.
- (i) The Trustee must from time to time review the Investment strategies or options available to Members of a Division and consider whether they are appropriate or should be changed. If the Trustee makes a material change to an Investment Option under this clause it will, as soon as practicable, change the Disclosure Document for the Division to reflect this change and will notify all of the Members of the Division who have chosen the Option which has been changed of the change and the reasons for the change and give those Members the chance to change their choice of investment option. The Trustee must advise any Investment manager of the change.

### **16.3 Investment restrictions**

The Trustee or the Investment Manager must not invest any money forming part of a Fund unless the Trustee or the Investment Manager and the other party to any relevant investment transaction are dealing with



each other at arms length in respect of the transaction or if they are not dealing with each other at arms length the terms and conditions of the transaction must be no more favourable to the other party than those which it would be reasonable to expect would apply if the parties were dealing at arms length in the same circumstances.

#### **16.4 Appointment of Investment Manager**

- (a) The Trustee at its discretion may from time to time appoint an Investment Manager to provide on-going advice regarding the investment of the assets of a Fund or to invest the money of a Fund or to manage the investments of a Fund or any of them.
- (b) An Investment Manager may be appointed only if the following conditions are satisfied:
  - (i) the appointment is in writing and the Investment Manager is eligible under the Complying Fund Requirements to be appointed to act and the agreement appointing the Investment Manager contains adequate provisions to enable the Trustee to require the Investment Manager from time to time to provide information which the Trustee needs to comply with the Complying Fund Requirements and which will allow the Trustee to assess the capability of the Investment Manager to manage the investments under management;
  - (ii) no provision of the agreement appointing the Investment Manager exempts the Investment Manager from liability for negligence or limits that liability.
- (c) The Trustee may delegate to an Investment Manager the whole or any part of the Trustee's powers, discretions and authorities relating to the investment of the money of a Fund and to the custody of assets of a Fund and the sale and conversion of any of those assets into money and the variation of the investments of a Fund.
- (d) Any powers, discretions and authorities delegated under this clause may be delegated for exercise by the Investment Manager alone or jointly with the Trustee, but in any case must be exercised by the Investment Manager on behalf of and at all times under the control of the Trustee.

#### **16.5 Authorised Investments**

- (a) The money forming part of a Fund which is not immediately required for payment of benefits of Members must be invested in

accordance with the investment strategy for a Fund in any of the following investments:

- (i) any investment which is authorised by law for investment of Trust Funds;
  - (ii) any share, stock, debenture, note, convertible note, bond, mortgage charge option to acquire shares or other securities, or similar security issued by any corporation (whether or not incorporated in Australia) and whether the security is fully or partly paid up;
  - (iii) on deposit with any bank or other financial body or institution in any type of account, whether secured or unsecured on any terms which the Trustee approves;
  - (iv) on deposit in any cash common fund operated by an authorised Trustee company;
  - (v) any Derivative or Commodities;
  - (vi) any Life Policy;
  - (vii) any real estate or any interest in real estate;
  - (viii) a loan of money whether secured (by a mortgage or a fixed or floating charge or by any other security at all) or unsecured and for any period or at call;
  - (ix) any unit in any unit trust established anywhere in the world and whether the unit is fully paid up or is subject to any or any contingent liability;
  - (x) any other things in action including debts and obligations of all kinds;
  - (xi) any other investments of any kind at all in which the Trustee could invest a Fund if the Trustee were the beneficial owner of a Fund and which the Trustee considers appropriate for a Fund and on any terms as long as the investment is not prohibited by any of the Complying Fund Requirements;
- (b) The Trustee is authorised and has the power, as the Trustee thinks fit:
- (i) to acquire, dispose of, exchange, encumber, lease, sub-lease, let, grant, release or vary any right or easement, or

otherwise deal in any way at all with real property of any kind or any estate or interest in real property;

- (ii) to acquire, dispose of, exchange, hire, lease, let, encumber or otherwise deal in any way at all with personal property of any kind on behalf of a Fund;
  - (iii) to invest any money of a Fund either alone or in partnership or co-ownership of any kind with any other person or persons;
  - (iv) to sell, grant options over, dispose of, transfer or otherwise deal in any way at all with all or any part of the assets of a Fund, for any consideration and on any terms which my Trustee thinks fit and at the discretion of the Trustee, to change or vary any investment which at time forms part of a Fund.
- (c) Without in any way limiting the generality of the powers of the Trustee apart from this sub-clause with regard to any land which at any time forms part of a Fund the Trustee may:
- (i) erect, alter, remove or pull down any buildings, walls, fences or drains or make other improvements of any kind to the land;
  - (ii) pay all rates, taxes and other outgoings;
  - (iii) take out and maintain any insurances which the Trustee considers advisable;
  - (iv) carry out any repairs, painting or any other Acts or things to preserve the property which the Trustee considers necessary or desirable;
  - (v) lease the land or any part of it for whatever period or periods at whatever rent or rents and with whatever powers rights and privileges and subject to any conditions that the Trustee considers appropriate or advisable and may accept surrenders or otherwise determine any leases;
  - (vi) sell or otherwise dispose of the land or any part of it by public auction, private treaty or by any other means at whatever price upon whatever terms and conditions and subject to any restrictions or rights and in any other manner which the Trustee may consider proper and expedient and upon or apart from any sale to grant easements or other rights over the land; and

- (vii) exercise whatever Acts of management or ownership of the land as may be incidental or ancillary to any of the Trustee's powers.
- (d) Notwithstanding any other provision of this Deed in making any investment, the Trustee must comply with all of the relevant Complying Fund Requirements.

#### 16.6 **Significant Adverse Change**

If the Trustee becomes aware of the occurrence of an event having a significant adverse effect on the financial position of a Fund, the Trustee must give written notice to the Regulator setting out details of that event no later than three (3) business days after becoming aware of the event.

### 17. **MEMBERS**

- 17.1 Any eligible person who wishes to participate in a Division and is eligible to be a Member under the relevant Part applying to that Division, must apply to the Trustee in writing in the form from to time approved by the Trustee.
- 17.2 An applicant must satisfy any eligibility criteria or pre conditions set out in the relevant Parts of Section Four.
- 17.3 The Trustee may require that an application for membership of a Fund be accompanied by the documents and other information specified by the Trustee.
- 17.4 The Trustee may impose any conditions on admission of an applicant as it thinks fit and may accept or may refuse an application for membership in its absolute discretion and is not required to give any reason for any refusal.
- 17.5 Where the Trustee has set conditions for eligibility for membership the Trustee may waive any or all of those conditions so that it may admit or retain as a Member an Eligible Person who would not otherwise be eligible to be a Member.
- 17.6 The Trustee may accept an application for a spouse of a Member or the spouse of an Eligible Person to become a Member of the Fund. An application for a spouse to become a Member must be in writing in the form from time to time specified or approved by the Trustee. The provisions elsewhere in this Deed relating to applications for membership and to issuing of Disclosure Documents will apply to applications by a spouse to become a Member of the Fund.

- 17.7 The Trustee may admit to a Fund or may refuse to admit to a Fund any Eligible Person who is unable to or fails to:
- (a) submit evidence of health to satisfy the Trustee or an Insurer;
  - (b) pass any medical tests which the Trustee or an Insurer may prescribe; or
  - (c) submit proof to the satisfaction of the Trustee of any statement in his application for admission.
- 17.8 If after an application by an Eligible Person to become a Member has been accepted any statement made or evidence submitted to the Trustee in support of or in connection with that application is found to contain any mis-statement, error or mistake the Trustee may make any adjustments to the benefits to be provided by a Fund for that Member and/or the contributions (if any) to be paid to a Fund by that Member as it, in its absolute discretion, considers appropriate.
- 17.9 As long as the arrangement does not contravene any of the Complying Fund Requirements, the Trustee with the agreement of a Member and of the Employer-Sponsor of that Member may make any arrangements which the Trustee thinks appropriate to vary the benefits and/or the contributions which would otherwise be payable for the Member under this Deed and the Trustee may make arrangements about any other matters relating to the Member's interest in a Fund as the Trustee thinks fit. The Trustee must confirm any arrangements made under this clause in writing to the Member and this Deed will after the arrangement has been made be read and construed in relation to that Member as if they were varied in accordance with the arrangement confirmed in writing under this clause.
- 17.10 Every Eligible Person on becoming a Member will be deemed to have approved of and to be bound by this Deed.

## **18. MEETINGS OF MEMBERS**

### **18.1 Trustee may convene meetings**

The Trustee may convene a meeting of Members of the Divisions or a meeting of the Members of any particular Division at any time. (In this clause eligible Members are referred to as "Voters").

### **18.2 Voters may requisition Meetings**

The Trustee must:

- (a) on the requisition of not less than 50 or one tenth in number, whichever is the less of the Voters forthwith convene a meeting of the Voters;
- (b) on the requisition of not less than 50 or one tenth in number, whichever is the less of the Voters of a Division forthwith convene a meeting of the Voters of that Division.

The requisition must state the objects of the meeting and the terms of any resolution proposed to be submitted to the meeting. The requisition must be signed by the requisitionists and deposited at the registered office of the Trustee and may consist of several documents in like form each signed by one or more requisitionists. The Trustee must make available all information in its possession in connection with the same. If the Trustee does not within 21 days from the date of the requisition being so deposited duly proceed to convene a meeting of the Voters or the Voters of the particular Division, the requisitionists or a majority of them in number may themselves convene the meeting but any meeting so convened shall not be held after three months from the date of such deposit. Any meeting convened under this clause by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Trustee except that the requisitionists shall give the like notice to the Trustee. The omission to give such notice to or the non receipt of such notice by the Trustee invalidates the meeting but the Trustee may waive such omission or non-receipt.

### 18.3 **Notice of Meeting**

- (a) *Ten business days notice required*

At least ten business days notice of a meeting specifying the place day and hour of the meeting shall be given to Voters.

- (b) *Notice to contain certain matters*

The Trustee will ensure that any notice of meeting contains adequate notice of:

- (i) any matters to be considered at the meeting of which it is aware;
- (ii) any resolutions to be put to the meeting of which it is aware; and
- (iii) a summary of information relating to those matters and resolutions that is relevant to the decision of a Voter on how to vote at the meeting.

- (c) Accidental omission to give notice does not invalidate meeting

The accidental omission to give such notice to or the non-receipt of such notice by any Voter shall not invalidate the meeting. The accidental omission to give such notice to or the non-receipt of such notice by the Trustee invalidates the meeting but the Trustee may waive such omission or non-receipt.

#### 18.4 **Right of audience**

The auditor and the representatives of the Trustee are entitled to attend any meeting of Voters or of Voters of a particular Division with or without their respective solicitors and/or counsel and all such persons shall have the right of audience thereat.

#### 18.5 **Chairman**

At a meeting convened by the Trustee some person nominated by it (whether a Voter or not) shall preside as chairman. If no such person is present or is present but unwilling to act within 15 minutes after the time appointed for holding the meeting the Voters present shall choose one of their number to preside as chairman.

#### 18.6 **Quorum**

No business shall be transacted at any such meeting unless a quorum is present when the meeting proceeds to business. The quorum shall be 50 or at least 10% of the number of Voters whichever is the lesser number or in the case of a meeting of Voters of a particular Division 50 or at least 10% of the number of Voters of that particular Division whichever is the lesser number. If within 15 minutes of the time appointed for any meeting a quorum is not present, the meeting shall:

- (a) if called for the purpose of passing an Ordinary resolution stand adjourned to the same day in the next week at the same time and the same place;
- (b) if called for the purpose of passing an Special resolution stand adjourned for such period as the chairman shall direct,

provided notice of the proposed Ordinary or Special resolution as the case may be and of the fact that those present in person or by proxy will constitute a quorum at an adjourned meeting and the place day and hour of such adjourned meeting have been given to the Voters by the Trustee.

At an adjourned meeting convened pursuant to paragraphs (a) and (b) hereof, the Voters present in person or by proxy shall form a quorum and shall have power to pass the resolutions to be proposed thereat.

## 18.7 **Method of Voting**

### (a) **In the first Instance to be by a show of hands**

Every question submitted to a meeting of Voters or meeting of Voters of a particular Division shall be decided in the first instance by a show of hands provided that a poll shall be taken in any case where it is required by this Deed or by law that the question be decided by a majority which is measured by a percentage of the votes cast by those present or where a poll be properly demanded as provided in clause.

### (b) **One vote for each one dollar standing to credit of account**

On a show of hands every Voter who is present in person or by proxy shall have one vote and on a poll every Voter shall have one vote for each one dollar (\$1.00) or part thereof standing to the credit of the voters Member's account at the close of business 48 hours prior to the meeting.

## 18.8 **Poll**

At any meeting of Voters unless a poll is demanded by the chairman or at least ten Voters holding or representing by proxy at least 10% of the total voting rights of all Voters of the plan or in the case of any meeting of Voters of a particular Division unless a poll is demanded by the chairman or at least 10% of Voters of that Division holding or representing by proxy at least 10% of the total voting rights of the Voters of that Division, a declaration by the chairman that a resolution has been carried or carried by any particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact. A poll may be demanded either before or immediately after any question is put to a show of hands.

## 18.9 **Manner of Poll**

If at any meeting a poll is demanded as provided in clause 18.8 it shall be taken in such manner and either at once or after an adjournment as the chairman directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. Any poll demanded at any meeting of Voters or at any meeting of Voters of a particular Division on the election of the chairman or any question of adjournment shall be taken at the meeting without adjournment. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.



#### **18.10 Effect of Resolution**

A resolution (whether ordinary or Special) passed at a meeting of Voters or Voters of a particular Division duly convened and held in accordance with this clause 18 shall be binding upon all the Voters or the Voters of that particular Division whether present or not present at such meeting and each of the Voters and the Trustee are bound to give effect thereto accordingly.

#### **18.11 Objection to qualification of Voter**

Subject to clause 18.12 no objection shall be raised to the qualification of any Voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting and his decision shall be final and conclusive.

#### **18.12 Proxies**

Votes may be given by proxy in accordance with the following conditions:

- (a) on a show of hands and on a poll votes may be given either personally or by proxy and a proxy shall have the same right of audience as a Voter;
- (b) the instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing;
- (c) any person may act as a proxy whether or not the person is a Voter;
- (d) the instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority or a legible facsimile transmission copy of the instrument appointing a proxy where that instrument is signed under the hand of the Voter must be deposited at the registered office of the Trustee or at such other place as is specified for that purpose in the notice of meeting not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote. In default the instrument shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.
- (e) an instrument appointing a proxy may be in the following form or in any form which the Trustee shall approve:

Grosvenor Pirie Master Superannuation Fund Series 2 (the 'Plan')

"I of

being a registered Member of Division \_\_\_\_\_ of the Plan hereby appoint

of

or, in his/her absence the chairman of the meeting to vote for me and on my behalf at the meeting of the Members of Division \_\_\_\_\_ of the Plan to be held on the day of 20 \_\_\_\_ and at any adjournment thereof

Dated this day \_\_\_\_\_ of 20 \_\_\_\_

The Common Seal of \_\_\_\_\_ was hereunto affixed in accordance with its constitution in the presence of.

I direct my proxy to vote for/against the proposed resolution. (In the absence of direction the proxy may vote as he/she thinks fit or abstain from voting)".

- (f) a vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death insanity or revocation shall have been received by the Trustee before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### 18.13 **Adjournment of Meeting**

The chairman may with the consent of any meeting of Voters adjourn the same from time to time and from place to place.

#### 18.14 **Minutes**

Minutes of all resolutions passed and proceedings at every meeting of Voters shall be made and duly entered in a book to be provided for that purpose by the Trustee and any such minutes as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting (if any) of Voters shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be

deemed to have been duly held and convened and all resolutions passed thereat and proceedings to have been duly passed and had.

## **19. EMPLOYER-SPONSOR**

### **19.1 Form of Application**

An employer who wishes to be admitted to a Division for the purpose of providing retirement and other approved ancillary benefits for its employees must lodge an application with the Trustee to become an Employer-Sponsor in the form required by the Trustee from time to time. At the time of lodgment of an application an applicant must provide to the Trustee any other information specified by the Trustee.

### **19.2 Pre-Conditions to Acceptance**

The Trustee must not accept an application for admission as an Employer-Sponsor unless the applicant has:

- (a) completed the application and provided all of the other information required by the Trustee;
- (b) agreed in writing to be bound by and comply with this Deed; and
- (c) received from the Trustee in writing and in a clear and effective manner, such information, statements and reports in relation to the operation, management and performance of the relevant Fund as the Complying Fund Requirements require in the circumstances to be given to the applicant.

### **19.3 Date of Acceptance**

An applicant will become an Employer-Sponsor upon the date of acceptance by the Trustee of the applicant's application or as otherwise specified by the Trustee in the notice of acceptance delivered to the applicant.

## **20. THE FUNDS**

20.1 The assets of a Fund are vested in the Trustee and are to be controlled and administered by the Trustee in accordance with this Deed and must be administered in accordance with all relevant Complying Fund Requirements.

20.2 Until a Member becomes eligible to receive a Benefit from a Fund, the Trustee must treat the Member's right to receive a Benefit from a Fund as contingent upon the Member satisfying the conditions which must be

satisfied before a Benefit can be paid to the Member set out in the Complying Fund Requirements or in this Deed.

20.3 The assets of a Fund will comprise:

- (a) contributions made by Employer-Sponsors, Members and other persons in accordance with this Deed;
- (b) any other monies or assets paid or transferred to the Trustee to be held on the trusts set out in this Deed;
- (c) the income arising from the investment of a Fund;
- (d) any accretions to or profits on realisation of investments; and
- (e) any other monies, assets, life policies or other investments held as part of the assets of a Fund in accordance with this Deed.

## **21. TRANSFER FROM OTHER FUNDS**

21.1 The Trustee in its discretion after receiving advice from an Actuary may make or carry into effect an arrangement with the trustees of another superannuation or like fund and/or any person who is a member or former member of another superannuation fund under which an agreed sum or agreed assets are paid into or transferred to a Fund and that person if he or she is not already a Member may be admitted as a Member and may be granted rights and benefits additional to or in place of those otherwise provided under this Deed as the Trustee may determine.

21.2 The Trustee may set up a Division as a successor fund (within the meaning of the SIS Regulations) to an existing regulated superannuation fund ("original fund") and may take whatever steps the Trustee thinks fit to facilitate the transfer of benefits from the original fund to the Division set up as the successor to the original fund, including without limiting the above:

- (a) making any changes to the Benefits entitlements of Members under any of the Parts set out in Section Four or to any other provision of this Deed as may be necessary to ensure that the Members who transfer from the original Fund ("transferring members") have conferred on them under the Division equivalent rights to the rights which they had under the original Fund in respect of Benefits;
- (b) setting up any separate Member accounts within the Fund to preserve the rights of transferring members to Benefits;

- (c) setting up any separate reserve accounts within the Fund to receive reserve or other unallocated amounts transferred to the new Division as the successor fund and to apply the amounts in those accounts solely for the benefit of the transferring members by meeting costs and expenses relating to the interests of the transferring members in the relevant Division and in supplementing or increasing the amounts credited to the Member Accounts for transferring members or in paying taxation liabilities arising in relation to the Member Accounts for the transferring members.

## **21A TRUSTEE MAY RECEIVE SPLITTABLE CONTRIBUTIONS**

21A.1 From 1 January 2006 where a Member of the Fund is the Spouse of another Member of the Fund or the Spouse of a member of another another Complying Superannuation Fund the Trustee may accept into the Fund on behalf of the Member the roll over (including internal roll over), transfer or allotment of a Contributions-Splitting ETP.

21A.2 Unless the Trustee decides otherwise where the Fund receives a Contributions-Splitting ETP the Member receiving the Contributions-Splitting ETP must advise the Trustee of the extent to which the Contributions-Splitting ETP consists of:

- (a) the taxed element of a post-June 1983 component;
- (b) undeducted contributions.<sup>23</sup>

## **22. TRANSFER TO OTHER FUNDS**

22.1 Subject to any conditions and indemnities which the Trustee may require, the Trustee after receiving a request from a Member to transfer all or part of the Member's Benefit and where applicable after receiving advice from a Actuary may pay or transfer or cause to be paid or transferred to the trustee of another complying superannuation fund for the benefit of the Member making the request the amount of the Benefit determined by the Trustee in accordance with this Deed at the time the payment is made and the receipt of the Trustee of that fund will be sufficient discharge to the Trustee from the trusts in this Deed in respect of the amount transferred and the Trustee will not in any way be responsible for the payment or disposal by the trustee of that fund of the amounts so paid or transferred.

22.2 Subject to clause 22.4 upon a Member's benefit being transferred and/or any policy on his life or other asset being assigned (as the case may be) pursuant to clause 22.3 that Member will have no further claim against a Fund for the Benefit which has been transferred.

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<sup>23</sup> This clause has been inserted by way of a Deed of Amendment dated 30 May 2006.

- 22.3 The Trustee may transfer a Benefit by transferring any of a Fund's assets. Any expenses associated with the transfer, including (but not limited to) stamp duty, brokerage fees and commission, must be paid by the Member or the Employer-Sponsor or deducted from the amount transferred.
- 22.4 The Trustee must not transfer a Benefit to another Superannuation Fund unless the relevant Member has given the Trustee his written consent to the transfer and the Trustees of the receiving Fund are required by the Trust Deed for that Fund to preserve the amount of the preserved benefits for that Member which are transferred from this Fund or unless the transfer is to a successor fund.
- 22.5 If an Employer-Sponsor is required by law to comply with choice of Fund requirements and as a result of the offer of a choice of funds a Member chooses a fund other than this Fund as a Fund to receive mandated Employer-Sponsor contributions which are made for them, the Member may request the Trustee to transfer their accrued benefits to their chosen fund or the Trustee may ask the Member to consent to such a transfer. The Trustee must have regard to all of the circumstances of a Fund including expected cash flow requirements, the liquidity of a Fund's investments and its existing and prospective liabilities when deciding whether to agree to the request to transfer a Member's accrued benefits to their chosen fund and when deciding the terms (including the date or dates on which the benefit will be transferred) on which it will agree to such a request.

## **22A CONTRIBUTIONS SPLITTING**

### **22A.1 Member application for contributions splitting**

From 1 July 2006 a Member of the Fund may in a financial year apply to the Trustee to roll over, transfer or allot some or all of the Members Splittable Contributions made by or in respect of the Member in the previous financial year to the Member's Spouse.

### **22A.2 Acceptance of contributions splitting application**

The Trustee from 1 July 2006 may accept an application to roll over, transfer or allot Splittable Contributions if:

- (a) The Member has not already made an application in relation to the same financial year which has been given effect or is being considered by the Trustee;
- (b) The amount of the Splittable Contributions to which the application relates does not exceed the Maximum Splittable Amount under the Complying Fund Requirements and Other Statutory Requirements;
- (c) The Member's Spouse is not:

- (i) Aged 65 years or more; or
- (ii) Aged between their preservation age and 65 years and permanently Retired;

and the Spouse has provided a statement to the Trustee confirming either that they are aged less than their relevant preservation age or they are between their preservation age and 65 years and not permanently Retired.

- (d) The Trustee has no reason to believe that the Spouse statement in (c) above is untrue.
- (e) The Member has specified in the application the amount of Taxed Splittable Contributions and Untaxed Splittable Contributions that the Member is seeking to split;
- (f) The amount of Untaxed Splittable Contributions specified in the application is less than or equal to the amount of undeducted contributions that would form part of an eligible termination payment if the Member withdrew their entire Benefit at the time of the Trustee giving effect to the application;
- (g) The amount of Taxed Splittable Contributions specified in the application is less than or equal to the taxed element of the Post June 1983 component that would form part of an eligible termination payment if the Member withdrew their entire Benefit at the time of the Trustee giving effect to the application;
- (h) The Splittable Contributions do not comprise part of a defined benefit component of a defined benefit interest in the Fund;
- (i) The Splittable Contributions are not subject to a family law payment split or payment flag.
- (j) Any fee decided by the Trustee to be charged to the Member to implement a transfer of Splittable Contributions has been paid.

### **22A.3 Trustee conditions on Splitting Application**

Notwithstanding Clause 22A.2 above the Trustee may accept a contributions splitting application in any circumstances permitted by the Complying Fund Requirements and Other Statutory Requirements or may impose such conditions as it decides on the acceptance of a contributions splitting application.

#### **22A.4 Time for implementing split**

If the Trustee accepts a contributions splitting application it will as soon as practicable and in any case within 90 days after receiving the application or within such other time as the Complying Fund Requirements and Other Statutory Requirements permits, rollover, transfer or allot the relevant Splittable Contributions to the Member's Spouse.

#### **22A.5 Regulator to be given statement**

If the Trustee accepts a contributions splitting application the Trustee shall give to the Regulator the statement required by the Complying Fund Requirements and Other Statutory Requirements (if any) in relation to the resulting Contributions-Splitting ETP paid.

#### **22A.6 Trustee can reject application**

The Trustee has discretion to reject any contributions splitting application made by a Member without ascribing any reasons thereto.

#### **22A.7 Section 82AAT Notice must be given before application**

Except as otherwise provided by the Complying Fund Requirements and Other Statutory Requirements the Trustee cannot accept a notice provided by a Member under section 82AAT of the Income Tax Act in respect of contributions which are the subject of a contributions splitting application already lodged with the Trustee which has not been rejected.<sup>24</sup>

### **23. AMENDMENT OF DEED**

23.1 Subject to any limitations or restrictions upon the power of the Trustee to change this Deed which are contained in the Complying Fund Requirements, the Trustee at any time, may change this Deed (including this sub-clause) in any way. Without limiting the above, the Trustee may alter, add to, revoke or delete all or any of the trusts or other provisions of this Deed. A change may be made by a Deed (Amending Deed) executed by the Trustee. Each change takes effect from the date of commencement which is set out in the Amending Deed (including amendments with retrospective effect), or if no date of commencement is set out from the date of the Amending Deed.

23.2 Despite clause 23.1 no change may be made to this Deed which may reduce or prejudice any benefits which have accrued to a Member (a "benefit reduction") unless the Complying Fund Requirements allow the benefit reduction to be made.

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<sup>24</sup> This clause has been inserted by way of a Deed of Amendment dated 30 May 2006,



## **24. INSURANCE**

- 24.1 As long as the Trustee does not contravene any of the Complying Fund Requirements by doing so, the Trustee may arrange and take out a Life Policy or Life Policies covering the happening of any event affecting a Member for the purpose of providing some or all of the benefits payable or provided under this Deed.
- 24.2 The Trustee may take out or acquire a Life Policy which relates to more than one Member and if it does so references to a premium or a benefit payable under a policy for a Member are to be construed as references to that part of the premium or benefit payable under the policy which in the opinion of the Trustee relates to that Member.
- 24.3 For the purposes of taking out, increasing or otherwise varying any Life Policy the Trustee may from time to time require any Member or any Eligible Person who has applied to become a Member to:
- (a) be medically examined;
  - (b) submit other evidence of health habits and pastimes;
  - (c) provide proof of age to the satisfaction of the Insurer; or
  - (d) provide any other information or do any other thing which the Trustee or an Insurer may require for the purpose of any insurance.
- 24.4 If an Eligible Person who has applied to become a Member or a Member refuses to undergo a medical examination or to take any other steps which may reasonably be required for the purpose of taking out insurance or does or omits to do anything that would or might vitiate a Life Policy which covers them or results in the policy money or any part of them not becoming payable the Trustee may adjust the benefits to be provided by a Fund for or in respect of that person in any manner which the Trustee considers appropriate.
- 24.5 In any case where the Trustee applies or has applied to an Insurer for insurance to provide any part of the Benefit of a Member, the Benefit of that Member may at the Trustee's discretion be reduced to the extent to which the Insurer refuses that insurance or refuses to grant that insurance on terms acceptable to the Trustee or to the extent that the Insurer declares that insurance void for any reason.
- 24.6 The Trustee must notify a Member of any adjustment, reduction or modification of the Member's benefit under this clause.

## 25. BENEFITS AND CASHING OF BENEFITS

### 25.1 General

(a) *Benefits only in accordance with the Complying Fund Requirements*

Despite anything elsewhere in this Deed:

- (i) benefits may only be paid to a Member by being cashed in accordance with the Complying Fund Requirements or by being rolled over within the superannuation system or transferred in accordance with the Complying Fund Requirements;
- (ii) a Benefit must not be paid to a Member except at a time and to the extent that a Fund is permitted to pay the Benefit under the Complying Fund Requirements;
- (iii) a Benefit must be paid when and to the extent that a Fund is obliged to pay the Benefit under the Complying Fund Requirements;
- (iv) a Member's unrestricted non-preserved benefit may be cashed at any time and a Member's preserved and restricted non-preserved benefit may be cashed by the Member as long as a relevant condition of release set out in the Complying Fund Requirements has been satisfied;
- (v) a Member's benefit may not be cashed in favour of a person other than the Member unless the Complying Fund Requirements allow payment to that person; and
- (vi) a Member's minimum benefits must be maintained in a Fund until they are cashed as benefits of the Member or are rolled over or transferred as benefits of the Member.

(b) *Payment to a Beneficiary who is not able to manage their affairs*

Where an amount is payable to or for the benefit of a person who is under a legal disability (such as a Dependant who has not reached their majority, or a person who is unable to manage his or her affairs), the Trustee may pay that amount to the person who appears to the Trustee to have control of the affairs of the person who is under a legal disability ("Guardian") and the receipt of the Guardian for any money paid to the Guardian by the Trustee will be a good discharge to the Trustee for that money and the Trustee will not be bound to see to the application by the Guardian of any money paid to them for the benefit of the person who is under a

legal disability but subject always to the Complying Fund Requirements and Other Statutory Requirements.<sup>25</sup>

(c) *Postponement of Payment*

As long as the postponement does not contravene any of the Complying Fund Requirements, the Trustee, at its discretion, to facilitate the orderly and efficient administration of a Fund:

- (i) may postpone the payment of any Benefit for any period after an event which entitles a person to receive a Benefit has occurred; and
- (ii) may make or arrange for payments to be made at convenient times.

If any payment is postponed for more than three (3) months interest must be added at a rate determined by the Trustee.

(d) *Transfer of Assets*

The Trustee, with the agreement of the Member or beneficiary who is entitled to receive a Benefit, may pay all or any part of the Benefit by transferring to that person any of the investments held by the Trustee on behalf of a Fund. If the Trustee exercises this power the value to be placed on any investments which are transferred is to be the value determined at the date of transfer by the Trustee or by an independent valuer appointed by the Trustee.

(e) *Relief of Hardship*

Where the Trustee is satisfied that a Benefit is payable from a Fund in respect of a Member and where it considers it necessary for the relief of hardship of the Member or the Members Dependants that a payment be made from a Fund, the Trustee may pay part of the Benefit before any or all of the proofs required by the Trustee for payment of the whole of the Benefit have been produced to the Trustee.

(f) *Trustee May Require Proofs*

The Trustee may require that a Member or his or her Dependants or Legal personal representative produce any evidence or proofs which the Trustee may reasonably need to establish their entitlement to be paid Benefits including without limiting the above, evidence of age, identity, death, health, or disability.

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<sup>25</sup> This clause has been amended by way of a Deed of Amendment dated 30 May 2006.

## **25.2 When Retirement Benefits are payable**

A Member is to be paid his or her Retirement Benefit when:

- (a) they are to be taken to have retired under clause 25.3; or
- (b) they reach sixty five (65) years of age and request payment of their benefit; or
- (c) under the Complying Fund Requirements their benefit must be cashed as soon as practicable.

## **25.3 When a Member is taken to have Retired**

A Member is to be taken to have retired:

- (a) where the Member has reached the age of 55, if the arrangement under which the Member was gainfully employed has come to an end and the Trustee is reasonably satisfied that the Member does not intend again to become gainfully employed either on a full time or part time basis; or
- (b) where the Member has reached the age of 60 if the arrangement under which the Member was gainfully employed has come to an end on or after the Member reaches the age of 60; or
- (c) where any other event occurs with respect of the Member which has the effect under the Complying Fund Requirements that the retirement of the Member is taken to have occurred for the purpose of determining whether that Member's benefit may be cashed.

References in this Deed to a person retiring or to retirement have the same meaning.

## **25.4 Retirement Benefit and Death Benefit**

The Retirement Benefit and Death Benefit for a Member is the retirement benefit and death benefit set out in the relevant Part in Section Four.

## **25.5 Person entitled to be paid the Death Benefit**

Where the Member who has died has given a binding nomination the Trustee must pay the death benefit to the Nominated Beneficiary set out in the binding nomination. In any other case the Trustee in its absolute discretion may pay the death benefit to:

- (a) a Nominated Beneficiary; or
- (b) any Dependants of the Member; or

(c) the legal personal representative of the Member.

Where the benefit is paid to the legal personal representative the Trustee is to pay the benefit as a lump sum.

If the Trustee is not able to find either a Dependant of the Member or a legal personal representative of the Member after making reasonable enquiries, the Trustee as long as it does not contravene the Complying Fund Requirements may pay the death benefit or an equivalent lump sum to an individual who is a relative (within the meaning of the Income Tax Act) of the Member who has died or may in its absolute discretion forfeit to a Fund the benefit which otherwise would have been payable on the death of the Member.

**25.6 Additional Contributions after a Benefit Is payable**

If after a Benefit has become payable to a Member further contributions are received by the Trustee for that Member the Trustee may transfer those additional contributions to an account for that Member as the Trustee thinks appropriate.

**25.7 Payment may be delayed until insurance proceeds received**

Subject to the provisions in this clause relating to postponement, the Trustee may delay payment of a Benefit or part of a Benefit or finalisation of the amount or terms of payment of a Pension until it receives payment of any amount payable under a Life Policy or Life Policies taken out by the Trustee for the purpose of providing some or all of the benefits payable or provided under this Deed covering the happening of an event affecting the retiring or deceased Member or until a claim under such a Policy is finalised.

**25.8 Purchase of an Annuity**

A Member entitled to be paid his or her Retirement Benefit may request the Trustee to use the whole or part of the Member's Benefit to purchase an annuity from a life insurance company or a registered organization for the benefit of the Member.

**25.9 Adjustment of Benefits**

The Trustee may in its sole discretion adjust any benefit payable on the death of a Member to take account of any benefit which has already been paid from a Fund to the Member.

**25.10 Payment of Benefits to Bank Account**

The Trustee may require a Member or any other person who is entitled to receive a Benefit to give the Trustee details of a bank account into which

payment of the Benefit may be made and payment of the Benefit to that account will discharge the Trustee.

#### **25.11 Automatic Roll-Overs and Unclaimed Moneys**

Where a Benefit is payable to or in respect of a Member and the period provided in the Complying Fund Requirements has elapsed since the benefit became payable and the benefit has not been paid, the Trustee may pay the benefit to an eligible Roll-Over Fund. If any amount is taken to be unclaimed money under the Complying Fund Requirements the Trustee must deal with the unclaimed money in accordance provisions of the Complying Fund Requirements dealing with unclaimed money.

#### **25.12 Creation of Sub-funds**

Where a Fund is liable to pay a Pension to a Member or any other person the Trustee may create a Pension Benefit Sub-fund which is a segment of a Fund:

- (a) which has at least one Member who is being paid a Pension from a Fund; and
- (b) which has separately identifiable assets and separately identifiable beneficiaries; and
- (c) where each beneficial interest in the segment is an interest only in the assets of the segment and not in any other assets of a Fund; and
- (d) where there is no transfer of assets, benefits or money between the segment and any other part of a Fund without a transfer of a corresponding beneficial interest; and
- (e) where the insurance and administration costs of the segment are attributable only to that segment.

#### **25.13 Forfeited Benefits**

To the extent that it is allowed to do so under the Complying Fund Requirements, the Trustee may forfeit a benefit which is payable or contingently payable from a Fund to a Member where the Member or the person otherwise entitled to the benefit assigns charges or otherwise disposes of or attempts to assign, charge or otherwise dispose of that benefit or the Trustee forms the opinion that the Member or other person entitled to the benefit is incapable of managing their affairs whether because of mental incapacity or physical infirmity. Any benefits forfeited under this clause must be dealt with by the Trustee within the time and in the manner required by the Complying Fund Requirements.

## **26. PENSIONS**

### **26.1 Definitions**

*A Life Expectancy Pension* means a Pension paid from a Fund under terms which meet the requirements set out in regulation 1.06(7) of the SIS Regulations;

*A Lifetime Pension* means a Pension paid from a Fund under terms which meet the requirements set out in regulation 1.06(2) of the SIS Regulations;

*An Allocated Pension* means a Pension paid from a Member's Pension Account where the terms for the pension meet the requirements set out in Regulation 1.06(4) of the SIS Regulations.

The following provisions of this clause apply to the payment of a Benefit as a Pension.

### **26.2 Pension must meet Pension Standards**

Any Pension paid under this Deed must meet the Pension Standards relevant to the particular pension. The Pension Standards as in force from time to time are to be treated as part of this Deed and this Deed are to be treated as requiring each Pension which is paid from a Fund to be upon terms fixed by the Trustee in accordance with this Deed which satisfy the requirements or the relevant requirements set out in the Pension Standards.

### **26.3 Terms of Pension must be set out in writing**

At the time when the first pension payment is made and at the time that any variation is made to a Pension, the terms applying to the pension (or the amended terms) must be set out in writing and given to the recipient of the Pension. Those terms must refer to and cover each of the matters set out in the relevant Pension Standards, which apply, to that Pension.

### **26.4 Member may ask Trustee to pay a Pension on particular terms or to pay a lump sum**

A Member or other person who is entitled to be paid a Lump sum or an Allocated Pension may elect to have the Trustee pay the Pension wholly or partly as a Lifetime Pension, a Life Expectancy Pension, an Allocated Pension or a Pension payable on other terms which allow the benefit to be taken to be a pension for the purposes of the SIS Act or subject to any limitations contained in the Complying Fund Requirements.

#### **26.5 Trustee must determine payment terms for Pension**

Before a Pension starts to be paid, the Trustee must determine the terms for payment of the Pension including whether the Pension is to be a Lifetime Pension, a Life Expectancy Pension, an Allocated Pension or a Pension payable on other terms which allow the benefit to be taken to be a pension for the purposes of the SIS Act, the annual amount of the Pension, the frequency of payment of the Pension and all of the other terms applying to the Pension. A Pension must be paid in the amounts and within the periods which are set out in the Pension Standards which are relevant to the type of Pension and as long as the requirements of those standards are met the Trustee may pay the Pension at the times and in the amounts agreed with the Primary Beneficiary or the Reversionary Beneficiary as the case may be. Before paying or determining the amount of any Pension to be paid to a Member, the Trustee must satisfy itself that after payment of the proposed amount of Pension there will be sufficient assets remaining in a Fund to provide the minimum requisite benefits of all of the other Members of a Fund.

#### **26.6 Variation or adjustment of Pension amount**

A Benefit payable to a Member may be increased or decreased by the Trustee in its absolute discretion by an amount which in the opinion of the Trustee ensures the benefit being paid to the Member is fair and equitable having regard to the minimum requisite benefits of all of the other Members of a Fund and the capacity of the assets of a Fund to support the Members Pension.

If a Pension Benefit becomes payable and the Trustee after receiving the advice of a Actuary decides that insufficient assets will remain in a Fund if the Member receives a Pension of an amount equivalent to the Retirement Benefit described in the Member Benefit Statement and the Complying Fund Requirements do not prohibit an adjustment to the benefit, the Retirement Benefit for the Member will be a Pension based on a lesser sum which is determined by the Trustee having regard to the Member's equitable share.

#### **26.7 Variations to Payment of a Pension**

A Member or other person who is receiving a Pension from a Fund with the agreement of the Trustee may vary the amount of the Pension or the terms applying to the Pension as long as the variation does not contravene any of the Complying Fund Requirements, the Pension continues to meet the relevant Pension Standards, and the Trustee has obtained the advice of a Actuary before agreeing to the variation.



## **26.8 Commutation of Pension to a Lump Sum**

Within the period allowed under the Pension Standards a Primary Beneficiary may request the Trustee to commute the whole or any part of any Pension which that person is entitled to receive under this Deed to a lump sum for immediate payment as a cash lump sum. The request must be in writing.

The Trustee must obtain the advice of an Actuary before determining the amount of the lump sum to which a Pension is to be commuted and must comply with any of the requirements of the Complying Fund Requirements in calculating that lump sum.

Where part of a Pension is commuted all subsequent pension payments must be reduced in the manner determined by the Trustee on the advice of an Actuary.

## **26.9 Death of a person who is being paid a Pension**

If a Primary Beneficiary who is being paid a Pension from a Fund dies a Pension equal to the proportion of the Pension payable to the Primary Beneficiary agreed upon with the Primary Beneficiary at the commencement of payment of the Retirement Benefit will continue to be paid by the Trustee to the Reversionary Beneficiary and if there are several Reversionary Beneficiaries who are entitled to the Pension Benefit in succession a Pension equal to the proportion of the Pension payable to the Primary Beneficiary agreed upon with the Primary Beneficiary at the commencement of payment of the Retirement Benefit will continue to be paid by the Trustee to those Reversionary beneficiaries in succession to each other as set out in the instrument of nomination for the period(s) allowed or set out in the relevant Pension Standards. A Pension benefit must not be paid to a Reversionary Beneficiary or must not continue to be paid to a Reversionary Beneficiary if the trustee would contravene any of the Pension Standards which apply to the Pension if the Trustee continued to pay the Pension to the Reversionary Beneficiary;

If on the death of the Primary Beneficiary there is no Reversionary Beneficiary or there is no surviving Reversionary Beneficiary no further benefit will be payable from a Fund except:

- (a) where the Pension is a Life Expectancy Pension the amount allowed under regulation 1.06(7) of the SIS Regulations is to be paid to the legal personal representative of the Primary Beneficiary as part of the estate of the Primary Beneficiary;
- (b) where the Pension is a Lifetime Pension and the Primary Beneficiary dies within 10 years after the commencement day of the pension, an amount not exceeding the difference between the sum of the amounts paid to the Primary Beneficiary and the sum of

the amounts that would have been so payable in the period of 10 years after the commencement day for the Pension, is payable to the legal personal representative of the Primary Beneficiary as part of the estate of the Primary Beneficiary;

- (c) where the Pension is an Allocated Pension which is being paid from a Member's Pension Account an amount equal to the balance in the Member's Pension Account is to be paid to the legal personal representative of the Primary Beneficiary.

If on the death of a Reversionary Beneficiary who is receiving a Pension there is no other Reversionary Beneficiary entitled to a benefit in succession to the deceased Reversionary Beneficiary or there is no surviving Reversionary Beneficiary no further benefit will be payable from a Fund except:

- (d) where the Pension is a Life Expectancy Pension the amount allowed under regulation 1.06(7) of the SIS Regulations is to be paid to the legal personal representative of the deceased Reversionary Beneficiary as part of the estate of the Reversionary Beneficiary; and
- (e) where the benefit is a Lifetime Pension and both the Primary Beneficiary and the Reversionary Beneficiary who survives the Primary Beneficiary die within 10 years of the commencement of the pension, the Trustee may pay to the legal personal representative of the deceased Reversionary Beneficiary as part of the estate of the Reversionary Beneficiary an amount determined under paragraph (b) above as if the Reversionary Beneficiary was the Primary Beneficiary; and
- (f) where the Pension is an Allocated Pension which is being paid from a Member's Pension Account an amount equal to the balance in the Member's Pension Account is to be paid to the legal personal representative of the Reversionary Beneficiary who has died.

#### 26.10 Allocated Pensions

A Member who is entitled to be paid a Pension may ask the Trustee to pay the whole or part of their Benefit into a Member's Pension Account set up for the Member and to pay an Allocated Pension from that Account. A person who is entitled to receive payment of an Allocated Pension must from time to time notify the Trustee of the amount and timing of the Allocated Pension which is to be paid. The amount and timing must meet the relevant Pension Standards.

A Primary Beneficiary, Reversionary Beneficiary or Nominated Beneficiary who is receiving payment of an Allocated Pension under this clause may

request the Trustee to convert the whole or part of their Allocated Pension to a lump sum. The request must be in writing. As long as payment of a lump sum in accordance with a request made under this clause would not contravene any of the Complying Fund Requirements, the Trustee may convert the amount referred to in the request and pay it as a lump sum BUT the amount paid as a lump sum must not be more than the balance standing to the credit of the Member's Pension Account from which the Allocated Pension is paid.

#### **26.11 Conversion of Allocated pension to another Pension**

A Member or a Reversionary Beneficiary who is entitled to receive or is receiving payment of an Allocated Pension ("the Applicant") may apply to the Trustee to convert the whole or a part of their Allocated Pension to a Lifetime Pension or a Life Expectancy Pension ("Alternative Pension").

As long as:

- (a) conversion of the whole or part of the Applicant's Allocated Pension to the Alternative Pension would not contravene any of the Complying Fund Requirements;
- (b) the Trustee has obtained written advice from the Actuary regarding the payment conditions and other terms, including the size of the benefit payment to be made each year, any automatic variation to that payment and the amount of any reversion, which a Actuary considers should apply to the Alternative Pension having regard to the amount of the Applicant's Allocated Pension which is to be converted to an Alternative Pension; and
- (c) the Applicant has in a written notice to the Trustee accepted the payment conditions and other terms for the Complying Pension recommended by the Actuary,

the Trustee may convert the amount of Allocated Pension set out in the application to an Alternative Pension payable on the terms recommended by the Actuary and accepted by the Applicant.

If the Trustee approves an application it must, in order to give effect to the conversion to an Alternative Pension, transfer from the Member's Pension Account for the Applicant to the unallocated assets of a Fund the amount which it, after receiving the advice of an Actuary, determines to be appropriate in all the circumstances.

#### **26.12 Payment of an Allocated Pension after Death of a Pension Recipient**

Where a person who is receiving an Allocated Pension dies and they have in respect of the Allocated Pension nominated a Reversionary Beneficiary the Trustee must continue payment of the Allocated Pension to the

Reversionary Beneficiary unless the terms applying to the Pension do not allow the pension to continue to be paid when the Trustee must pay the balance in the Member's Pension Account to the legal personal representative of the person who has died. If there is not a Reversionary Beneficiary the balance of the Member's Pension Account must be paid to the Legal personal representative of the person who has died.

## 26.13 TERM ALLOCATED PENSIONS

### 26.13.1 Definitions

The following definitions apply in this clause 26.13.

**Commencement Day** has the meaning set out in SIS.

**Complying Superannuation Fund** has the meaning set out in SIS.

**Dependant** has the meaning ascribed to that term in the Superannuation Industry (Supervision) Act 1993.

**Interdependency Relationship** has the meaning set out in SIS.

**Life Expectancy** means the life expectancy of a Member or the life expectancy of a Member's Spouse as determined in accordance with the relevant provisions of SIS.

**Market Linked Pension** means a pension described in this clause 26.13.

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

**Spouse** has the meaning ascribed to that term in the Superannuation Industry (supervision) Act 1993.

### 26.13.2 Payment of Market Linked Pension

The Trustee may, despite any other provisions of the Deed, and in accordance with the provisions of this clause 26.13, pay a Market Linked Pension or Market Linked Pensions to each Member.

### 26.13.3 SIS

No payment shall be made pursuant to this clause unless the payment is permissible under the provisions of SIS applicable to Complying Superannuation Funds.

### 26.13.4 Market Linked Pension Requirements

Subject to the provisions of SIS applicable to Complying Superannuation Funds, any amount payable to a Member under this clause shall be paid

to that Member as a pension, on such terms as agreed by the Member and the Trustee provided that:

- (a) pension payments are made on an annual basis to the Member or the Member's reversionary beneficiary:
  - (i) throughout a period equal to the Member's Life Expectancy from the Commencement Day of the Member's Market Linked Pension (rounded up to the next whole number if the Member's Life Expectancy does not consist of a whole number of years); or
  - (ii) throughout a period equal to the Member's Life Expectancy mentioned in paragraph 26.13.4(a)(i) calculated, at the option of the Member, as if the Member were up to 5 years younger on the Commencement Day; or
  - (iii) throughout a period equal to either:
    - (A) the Life Expectancy of the Member's Spouse on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Member's Spouse does not consist of a whole number of years); or
    - (B) the Life Expectancy of the Member's Spouse calculated, at the option of the Member, as if their Spouse were up to 5 years younger on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Member's Spouse does not consist of a whole number of years),

as selected by the Member and approved by the Trustee  
PROVIDED THAT:

- (C) the Member has requested that their Market Linked Pension revert to their surviving Spouse on their death; and
- (D) the Life Expectancy of the Member's Spouse is greater than the Life Expectancy of the Member; and
- (E) the Member has not chosen to make an arrangement mentioned in paragraph 26.13.4(a)(i) or (ii); and

- (b) the total amount of the Market Linked Pension payments to be made in a year (excluding payments by way of commutation pursuant to clause 26.13.5 but including payments made under a payment split in accordance with the Family Law Act) are determined in accordance with the relevant provisions of SIS; and
- (c) the Market Linked Pension does not have a residual capital value; and
- (d) the Market Linked Pension cannot be commuted except in those circumstances set out in clause 26.13.5; and
- (e) the Market Linked Pension cannot be transferred except in those circumstances set out in clause 26.13.6; and
- (f) if the Market Linked Pension reverts to another person, it must not have a reversionary component greater than 100% of the account balance of the Member immediately before the reversion; and
- (g) the capital value of the Market Linked Pension, and the income from it, cannot be used as security for a borrowing; and
- (h) the Market Linked Pension complies with any other requirements of SIS relating to such pensions which may apply from time to time.

**26.13.5 Commutation of Market Linked Pension**

- (a) The Market Linked Pension can only be commuted in the following circumstances:
  - (i) if the Market Linked Pension:
    - (A) is not funded from the commutation of particular annuities or pensions as specified under SIS; and
    - (B) the commutation is made within 6 months after the Commencement Day of the Market-Linked Pension;

or
  - (ii) subject to paragraph 26.13.5(a)(iii), on the death of the Member or the Member's reversionary beneficiary, by payment of:
    - (A) a lump sum or a new pension to one or more Dependants of either the Member or the Member's reversionary beneficiary; or

- (B) a lump sum to the legal personal representative of either the Member or the Member's reversionary beneficiary; or
- (C) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in paragraphs 26.13.5(a)(ii)(A) or (B), a lump sum to another individual;

or

- (iii) if the Member has opted, under paragraph 26.13.4(a)(iii), for a period which is calculated in relation to the Life Expectancy of the Member's Spouse, the Market Linked Pension cannot be commuted until the death of both the Member and the Member's Spouse; or
- (iv) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit that is a particular annuity or pension as specified under SIS; or
- (v) to pay a superannuation contributions surcharge in accordance with the relevant provisions of SIS; or
- (vi) to give effect to a payment split in accordance with the Family Law Act; or
- (vii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the Corporations Act.
- (viii) If the Market Linked Pension is commuted in accordance with this clause 26.13.5, the commutation amount cannot exceed the account balance of the Member immediately before the commutation.

#### **26.13.6 Transfer of Market Linked Pension**

The Market Linked Pension can only be transferred in the following circumstances:

- (a) on the death of the Member:
  - (i) to a Dependant of the Member; or
  - (ii) to the legal personal representative of the Member; or
- (b) on the death of the Member's reversionary beneficiary; or

- (i) to a Dependant of the Member's reversionary beneficiary;  
or
- (ii) to the legal personal representative of the Member's reversionary beneficiary; or
- (c) if the Market Linked Pension of the Member is transferred directly to the purchase of another benefit that is a particular annuity or pension as specified under SIS.<sup>26</sup>

**27. SPLITTING ORDERS OR AGREEMENTS UNDER THE FAMILY LAW ACT**

In accordance with the Family Law Act and the 515 Act, SIS Regulation and other Statutory Requirements or by a court order ("Payment split legislation") and despite anything elsewhere in this Deed, the Trustee:

- (a) may not while a payment flag or similar restriction applies in relation to a Benefit payable to a Member pay any part of the Benefit payable from the Fund affected by the payment flag or other restriction to the Member and must establish procedures to record whether a payment flag or similar restriction operates with respect to a Benefit payable from the Fund;
- (b) may establish procedures to record any financial agreement under the Family Law Act or court order binding on the Trustee under which a spouse or former spouse of a Member is entitled to be paid any part of the Benefit otherwise payable from the Fund to the Member payment splitting agreement;
- (c) with respect to any Benefit covered by an financial agreement under the Family Law Act or court order binding on the Trustee requiring that the whole or part of the Benefit be paid to the spouse or former spouse of the Member, pay to that spouse the amount to which they are entitled under the agreement or order;
- (d) may provide to the Member, the spouse of the Member or anyone who intends entering into a financial agreement under the Family Law Act with a Member who makes application to the Trustee in the manner required by the payment split legislation or the regulations made under that legislation the information about the interest of the relevant Member in the Fund;
- (e) may treat the spouse or former spouse of a Member as if they were member of the Fund and may establish whatever accounts

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<sup>26</sup> This clause has been inserted by way of a Deed of Amendment dated 15 February 2005.



within the Fund relating to the interest of a spouse or former spouse of a Member in the Benefit otherwise payable to the Member that the Trustee thinks fit;

- (f) may do any other things which the Trustee thinks appropriate to give effect to a payment flag or to an agreement or court order binding on the Trustee to split a Benefit between the Member and the spouse or former spouse of the Member.

## **28. ACTUARY**

- 28.1 The Trustee may at any time appoint an Actuary to a Division and must appoint an Actuary to a Division if required to do so by the Complying Fund Requirements.
- 28.2 Where an Actuary has been appointed to a Division the Trustee may obtain the advice of the Actuary before determining the amount of any contribution to be made to the Division or the amount of any pension or other benefit to be paid or the amount of any lump sum into which a pension or part of a pension is to be commuted.
- 28.3 Where an Actuary has been appointed to a Division the Trustee may at any time and must when required by the Complying Fund Requirements arrange for the Actuary to conduct an Actuarial investigation of the Division and report in writing to the Trustee regarding the position of the Division. The Actuary's Report must cover the matters required to be covered by the Complying Fund Requirements and may cover any other matters which the Trustee or the Actuary think appropriate.
- 28.4 The Trustee may deal with any surplus or deficiency disclosed by an Actuarial report by decreasing or increasing rates of contribution or by changing the entitlement to benefits or by making any other arrangements including repayment to any Employer-Sponsor who may have contributed to a Fund in respect of Members but the Trustee may only deal with any surplus in a manner which is allowed by, and after obtaining any consents which are required to be obtained under the Complying Fund Requirements.
- 28.5 The Trustee must request an Actuary to provide all certificates and reports which must be provided by an Actuary in relation to a Fund or the interests of Members in a Fund under the Complying Fund Requirements and under any of the Other Statutory Requirements at the time and in the manner required under the relevant Requirements.

## **29. CONTRIBUTIONS**

- 29.1 The Trustee may receive any money or other property of any kind to be held by it for the purpose of providing benefits under this Deed as long as the Trustee would not contravene any of the Complying Fund Requirements by receiving and holding that money or property.
- 29.2 Subject to any special arrangements for a Member which may be made with the Trustee and as long as the Trustee would not contravene any of the Complying Fund Requirements by receiving and holding the money or property, a Member or any other person may contribute to a Fund any amount or any property for the purpose of providing benefits for the Member under this Deed.
- 29.3 An Employer-Sponsor may contribute for any Member who is employed by it.
- 29.4 Where a spouse of a Member has been admitted as a Member of a Fund the Member may make contributions to the Fund for the spouse in the amounts and at the times agreed with the Trustee. The spouse may also make contributions to the Fund with the consent of the Member.
- 29.5 If a Member ceases to be an Eligible Person the Member must not make any further contribution to a Fund until the Member again becomes an Eligible Person unless the Complying Fund Requirements allow the Member to continue to make contributions.
- 29.6 Notwithstanding any other provision of this Deed the Trustee must not accept a contribution to a Fund if the Trustee would contravene any of the Complying Fund Requirements by accepting the contribution.
- 29.7 If the Trustee at any time discovers that contributions have inadvertently been received into a Fund in breach of any of the Complying Fund Requirements, the Trustee must refund or retransfer those contributions less any charges reasonably referable to those contributions and must make any necessary adjustment to the benefits to which relevant Members are entitled.

## **30. NOMINATION OF BENEFICIARIES**

### **30.1 Nomination of Dependant to receive a Death Benefit**

A Member at any time before payment or final payment of a benefit may nominate any Dependant to succeed to his or her benefits if he or she dies while he or she is a Member of a Fund. The person so nominated is referred to in this Deed as the Nominated Beneficiary.

### **30.2 Reversionary Beneficiaries**

A Member may nominate a Dependant of the Member who is to be the Reversionary Beneficiary in respect of any Pension benefit to which the Member is entitled or may nominate two or more Dependents as Reversionary Beneficiaries of a Pension Benefit in succession.

### 30.3 Nature of nominations

Each Nomination must be in writing in a form approved by the Trustee. If the SIS Act allows a Member to make a nomination which requires the trustee to provide any benefits in respect of the Member on or after the Member's death to a person or persons mentioned in the nomination (a binding nomination) a Member making a nomination of a beneficiary for any of the purposes set out above may make a binding nomination as long as they satisfy the requirements for a valid binding nomination set out in the SIS Act and the SIS Regulations. Where the SIS Act or the SIS Regulations allow a Member to make a nomination which is binding on the Trustee and the nomination signed by the Member is stated to be a binding nomination and it meets all of the requirements for a binding nomination set out in the SIS Act or the SIS Regulations a nomination is to be treated by the Trustee as a binding nomination. A non-binding nomination will not in any way bind the Trustee in exercise of any of its discretions under this Deed.

A Member may revoke any nomination made under this clause and substitute a new nomination.

## 31. ACCOUNTS

31.1 The Trustee must keep accounting records for a Division which:

- (a) correctly record and explain the transactions and the financial position of a Division;
- (b) will enable the Trustee to prepare all accounts and statements for a Division which must be prepared by it under the Complying Fund Requirements; and
- (c) will enable the auditor and where necessary a Actuary to prepare reports regarding the position of a Division;

and the Trustee must keep and maintain all other records which will enable the Trustee to administer a Division in accordance with the requirements of this Deed and to satisfy all of the obligations placed upon the Trustee under this Deed and all of the obligations relating to administration of a Division, the provision of accounts and reports and the provision of information to Members that are set out in the Complying Fund Requirements.

31.2 Unless the only interest of the Member in a Division is an interest in an allocated pool of investments within the Division, the Trustee must keep a Member's account in respect of each Member and shall record the following credits to that account:

- (a) any amounts received for the Member from any other superannuation fund or superannuation entity;
- (b) any contributions paid by or in respect of the Member;
- (c) any reimbursement received from the Member or Employer-Sponsor in respect of any expense paid by the Trustee in respect of the Division to which the Member or Employer-Sponsor has been admitted ("the relevant Division");
- (d) the distribution of any surplus in the Expense Reserve Account maintained in respect of the Division;
- (e) any Income Entitlement (as determined under clause 32.6);<sup>27</sup>
- (f) the proceeds of any insured benefit arranged in respect of any Member;
- (g) any other moneys received by the Trustee in respect of the Member,

and subject to the provisos in respect of payment of benefits in the Rules and the member-protection standards will record the following debits against that account:

- (h) any benefits paid or payable in respect of the Member;
- (i) any draw downs paid or payable in respect of the Member;
- (j) any pension payments paid or payable in respect of the Member;
- (k) any charges or levies imposed in respect of the Member;
- (l) the cost of any insured benefit arranged in respect of the Member;
- (m) any disbursements in connection with the acquisition, sale, collection, distribution of or dealing with an investment;
- (n) any commission or brokerage payable in respect of participation in the Division in accordance with the rates disclosed in the current disclosure statement;

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<sup>27</sup> Paragraph replaced by Deed of Amendment dated 25 June 2007.

- (o) tax, whether assessed charged or imposed by or under any Federal or State law, which the Trustee determines may be or is assessed upon the taxable income of the relevant Division to the extent to which the Trustee determines such tax is attributable to the Member;
- (p) levies paid under the Complying Fund Requirements for whatever reason to the extent to which they are in the opinion of the Trustee attributable to the Member;
- (q) the costs of the kind incurred in respect of any Policy Committee established in respect of a Employer-Sponsor;
- (r) any other payment made in respect of the Member pursuant to the provisions of this Deed.

31.3 Where the Trustee decides that it is appropriate having regard to the entitlements of Members to Defined Benefits or Lifetime or Life Expectancy Pensions that some of the investments in a Divisions should be held as an unallocated pool, the Trustee may set up such accounts as it thinks fit in relation to the pool and the interests of the Members in the pool and the pool is to be treated as regards distributions of income and distributions from reserves in the same way as if the pool was a Member account.

31.4 The Trustee may establish additional accounts for each Member of a Division as it thinks fit make any other adjustments to the accounts which it considers to be appropriate.

## **32. VALUATION AND INCOME ENTITLEMENT**

32.1 The Trustee must value the Investments of a Division or cause them to be valued on the last day of each period for which a valuation is required. The Trustee may value the Investments of a Division at any other time that it thinks it appropriate or desirable to do so.

32.2 Each valuation is to be made in the manner set out in the definition of "value" in clause 1 of this Deed.

32.3 If the Trustee considers that the principles upon which an Investment is to be valued as set out in clause 1 are not appropriate or fail to properly reflect the realisable value of the Investment the Trustee may determine different principles which are to apply to valuation of that Investment and the Investment is to be valued in accordance with those principles.

32.4 Despite the above the Trustee may postpone the valuation of any Investment where it considers it is not practicable to value the Investment

at the time or that any valuation would not properly reflect the realizable value of the Investment.

32.5 If an Investment is denominated in a currency other than Australian Dollars the value is to be converted into Australian Dollars at the rate agreed with the Auditor.

32.6 The Trustee on each Distribution Date must fix the Income Entitlement which is to be added or deducted from each Member's account or to or from each unallocated investment pool for the Entitlement Period.

The Income Entitlement is:

Y-E

Where:

Y (gross income) = the total of all interest received or accrued from any source, all dividends and rent and all other earnings and other gains received or receivable during the Income Entitlement Period with respect to the Investments made for each Member and realised and unrealised gains and losses on those Investments calculated having regard to the valuations made of those investments; and

E = the amount of the expenses of the relevant Division which in the opinion of the Trustee should be deducted from the gross income and any other charges or costs which have not been charged against any Expense Reserve Account relating to the relevant Division including without limiting the above:

- (a) at the discretion of the Trustee depreciation or amortisation of any Investments at the rate or rates fixed by the Trustee;
- (b) all costs charges expenses taxes and duties and other outgoings and disbursements properly incurred or borne in connection with the Investments or the administration of the Investments and chargeable against the income; and
- (c) the amount of any provisions or contingencies which the Trustee considers should be created or brought to account so that the income for the period fairly represents the financial performance of the Investments in the period.

32.7 Any question whether anything received or receivable by the Trustee is income or not and whether any expense should be charged against income is to be decided by the Auditor having regard to the terms of this Deed and prepared in accordance with generally accepted accounting principles and relevant accounting standards and must give a true and fair view of the financial position and performance of the Division.

32.8 In preparing the accounts the Trustee may include any accruals and may raise or transfer amounts to or from any provisions and make any adjustments as the Trustee thinks appropriate.

### **33. RESERVES**

#### **33.1 General Reserve**

- (a) The Trustee may keep a General Reserve.
- (b) The Trustee will credit to a General Reserve the Income Entitlement distributed to the General Reserve under the preceding clause, other amounts received by the Trustee arising from the Division's investment or administration as the Trustee thinks fit and any other amount which may under this Deed be credited to the General Reserve.
- (c) The Trustee may divide the General Reserve into sub-accounts.

#### **33.2 Allocation of General Reserve**

The Trustee may apply any balance in the General Reserve from time to time in any of the following ways:

- (a) the Trustee may consider a balance in the General Reserve in determining the Income Entitlement to be distributed for any period, and may allocate any part of the balance in the General Reserve to Member's Accounts and other accounts in accordance with the rights to the Income Entitlement fixed for the period.
- (b) the Trustee may debit any expenses, including insurance premiums, to the General Reserve.
- (c) the Trustee may allocate amounts from the General Reserve to Members Accounts to increase a Member's benefit entitlement.
- (d) the Trustee may pay or allocate any part of the balance in the General Reserve in any other manner permitted under the Complying Fund Requirements as a proper purpose for distribution of a reserve.

#### **33.3 Foregone Benefits Reserve**

- (a) The Trustee may keep a Foregone Benefits Reserve.
- (b) The Trustee will credit to the Foregone Benefits Reserve any balance of a Member's Employer's Sub-account remaining after payment of the Member's benefit.

### 33.4 Allocation of Foregone Benefits Reserve

The Trustee may apply any balance in the Foregone Benefits Reserve from time to time in any of the following ways:

- (a) in determining the Income Entitlement for any period and may allocate any part of the balance in the Foregone Benefits Reserve in the same ways as it can allocate or distribute amounts in the General Reserve.
- (b) the Trustee may credit amounts to Members Accounts in payment of contributions that an Employer-Sponsor or the Members are required or elect to make pursuant to the Rules.

The Trustee may pay or allocate any part of the balance in the Foregone Benefits Reserve in any other manner permitted under the Complying Fund Requirements as a proper purpose for distribution of a reserve.

### 33.5 Expense Reserve Account

The Trustee may keep an Expense Reserve Account for a Division.

The Trustee must record the following credits and debits to any Expense Reserve Account established in respect of the relevant Division (“the relevant Expense Reserve Account”):

- (a) fees and charges levied in respect of the Division or any part of it including amounts debited from Members Accounts in payment of expenses incurred in the administration of the Division and the cost of insurance premiums for Members;
- (b) any commissions or other emoluments received by the Trustee on its own account and not on account of any other person in respect of the investments of the assets of the Division or otherwise;
- (c) refund of the amount of any tax or charges;
- (d) all interest, dividends and other income earned from the investment of the amount standing to the credit of the relevant Expense Reserve Account from time to time;
- (e) such part of the costs of establishing the Plan including the costs of acquiring the text and format of this Deed, the licence to use the same and of the preparation, approval and stamping of this Deed in accordance with the Act as the Trustee considers appropriate;
- (f) the costs of preparing, printing and issuing offers to participate in the Division including the costs of preparation, approval and registration of any Disclosure Document and including but without



limiting the generality of the foregoing legal, valuation, listing, printing and graphic design fees payable in respect of any Disclosure Document and further to the costs of preparing printing and issuing brochures advertising the Division;

- (g) such part of the costs of maintaining and auditing the books of account, accounts and the registers in accordance with this Deed and the law generally as the Trustee considers appropriate;
- (h) the costs of establishing and maintaining the register of members, register of Employer-Sponsors and any investment register;
- (i) distribution of or other dealing with any investment of the Division including legal fees, stamp duties, brokerage and commission, survey and valuation fees, registration fees and consultants fees;
- (j) the auditor's reasonable fees and expenses in connection with the auditing of the accounts of the Division, the preparation of taxation returns in relation to the Division and all other functions of the auditor performed in respect of the Division pursuant to this Deed;
- (k) fees paid to actuaries, approved valuers, solicitors, barristers, accountants, surveyors, contractors and other qualified person as provided in this Deed including valuation fees paid in respect of investments proposed to be purchased whether purchased or not;
- (l) stamp duties, financial institution duties and similar imposts;
- (m) any amounts paid in respect of taxes and charges assessed charged or imposed by or under any Federal or State law upon the taxable income of the Division (including capital gains realised or unrealised in respect of the Division);
- (n) costs of preparing printing and issuing of the information required to be given to any person under the Complying Fund Requirements, confirmations, accounts, other statements cheques and payment orders required to be circulated amongst the Employer-Sponsors and Members;
- (o) costs of postage of all cheques payment orders accounts notices and other documents posted to all or any Members or other persons in accordance with the provisions of this Deed;
- (p) disbursements incurred in convening or holding Policy Committee meetings to the extent to which such disbursements are not dealt with pursuant to clause 15 and for any meetings of Members and Employer-Sponsors and implementing any resolution passed at such meetings including an allowance to the Trustee for the reasonable costs of the time expended by its employees and

agents in relation to the preparation for the holding of such meetings;

- (q) disbursements and costs incurred by or on behalf of the Trustee or in connection with the retirement of the Trustee under this Deed and the appointment of another in substitution thereof and anything ancillary or incidental to such retirement or appointment including disbursements incurred in convening or holding any meeting of Members of Employer-Sponsors convened to remove or approve the appointment of a new Trustee of the relevant Division;
- (r) except where the court otherwise directs, disbursements and costs by or on behalf of the Trustee in or in connection with the initiation, carriage and settlement of any court proceedings (including any negotiations and demands relating thereto) against the Trustee arising however from any breach or default by the other under this Deed; and
- (s) all costs and expenses incurred in modifying or altering the provisions of this Deed including any costs and expenses reasonably and properly incurred by the Trustee obtaining the approval and execution of any supplemental deed or obtaining any approvals which may be required by law or otherwise for the supplemental deed and any costs and expenses reasonably incurred by the Trustee in convening any separate meetings of Members or Employer-Sponsors to obtain their approval for the amendments modifications or additions.

Where the Trustee does not pay for any of the costs, charges and expenses out of its own moneys the Trustee can record those costs, charges and expenses as and when incurred in respect of the Division as debits against the relevant Expense Reserve Account except that the Trustee cannot record the costs, charges and expenses as debits where the effect of the debit would be to create a negative balance in the Expense Reserve Account. In this case the Trustee must pay for such costs, charges and expenses out of its own moneys and seek reimbursement.

## **34. AUDIT**

### **34.1 General**

- (a) The Trustee must appoint an Auditor to audit the financial records of a Fund.
- (b) The Trustee must ask the Auditor to audit the accounts and statements of a Fund as at the end of each Financial Year and to

execute an audit certificate in the form prescribed in the Complying Fund Requirements within the period set out in those requirements. The Trustee must ask the Auditor to provide any other reports which are required under the Complying Fund Requirements.

- (c) The Trustee and the Employer-Sponsors must give the Auditor access to all accounts and documents of a Fund under their control for the purpose of carrying out the audit.
- (d) The Trustee may remove an Auditor at any time by notice in writing to the Auditor and must then appoint another Auditor.

#### **34.2 Provision of Information to an Administrator**

- (a) If an Administrator is appointed to administer a Fund, an Employer-Sponsor must provide to the Administrator such information as is required by the Administrator for it to properly administer a Fund.
- (b) The Trustee may require the Administrator to provide to it details of any benefit paid or benefit to which a Member is entitled including the details upon which a benefit calculation was based.
- (c) The Administrator may act on any information provided to it by an Employer-Sponsor and is not liable for any error in that information.
- (d) The Trustee may rely on:
  - (i) a certificate of the Administrator that the Fund records have been maintained in accordance with the information supplied to it by Employer-Sponsors and that benefits have been calculated in accordance with those records;
  - (ii) a certificate of an Employer-Sponsor that the Employer-Sponsor has contributed the amounts it is required to contribute under the Rules,

and is not liable for any error in any such certificate.

### **35. TAXATION**

- 35.1 Notwithstanding any other provision of this Deed the Trustee in its absolute discretion unless it would contravene any of the Complying Fund Requirements by doing so:

- (a) may deduct from any contribution to a Fund, any income earned by a Fund any capital gain realised in a Fund or from any payment out of a Fund any amount required to pay any tax assessed or payable or anticipated to be payable in respect of that receipt or payment;
- (b) may pay from the assets of a Fund the amount of any taxes assessed against or required to be paid by the Trustee in relation to a Fund or in relation to any Member's interest in a Fund (including any tax levied on any of the assets of a Fund or on any transaction entered into by the Trustee in relation to a Fund) and if necessary for that purpose the Trustee may realise any asset of a Fund and convert it to cash;
- (c) in preparing the accounts (including the individual accounts for Members of a Fund):
  - (i) may make provision for and set aside amounts for payment of taxes including provision for any Contributions Tax which is anticipated to be payable in relation to a Member's interest in a Fund or for taxes which are anticipated to be payable on unrealised gains in the capital value of the assets of a Fund;
  - (ii) may apply or deal with any taxation refunds, prepayments of tax or advance payments of tax and any tax credits or rebates and make any adjustments to any provisions previously made by it in the accounts of a Fund for payment of taxes as from time to time seem necessary or appropriate;
- (d) may apply any amount provided in the accounts of a Fund for payment of taxes in excess of the amount actually paid or payable for a particular year of income of a Fund towards payment of taxes in a subsequent year or otherwise apply the amount of that excess for the benefit of the Members as the Trustee thinks appropriate;
- (e) may, in paying any benefit, make any adjustment to the benefit which it considers appropriate to take account of any tax paid or assessed or expected to be payable or any advance payment of any tax or any tax refund or tax credit which has or which is expected to be received in respect of the Member's interest in a Fund.

35.2 If tax becomes payable by a Fund in relation to a year of income which has concluded and in respect of which any provision made in the accounts of a Fund for payment of tax for that year of income is inadequate nothing in this clause or elsewhere in this Trust Deed shall be construed to require the Trustee to make retrospective adjustments to any

benefits or entitlements of Members or to make any other retrospective adjustment to the accounts for a Fund.

- 35.3 A Member must provide to the Trustee whatever information is required by the Trustee to satisfy its obligations under the Superannuation Contributions Tax (Assessment and Collection) Act.
- 35.4 Where a Member is entitled to object against an assessment of any tax levied against or paid by the Trustee in respect of a Fund or of the Member's interest in a Fund the Trustee must give to the Member on request all information relating to a Fund or the Member's interest in a Fund which the Member may reasonably require for the purpose of objecting against the assessment and of pursuing their objection against the assessment including any appeal against disallowance of their objection.
- 35.5 Where Contributions Tax or any other tax is assessed in respect of or in relation to a Member's interest in a Fund and the Trustee is entitled to object against that assessment the Member may request the Trustee to object against the assessment. The Trustee may refuse that request or may agree to lodge the objection and to pursue it and any appeal against disallowance of the objection on any terms or conditions including a condition that the Member pay the Trustee's reasonable costs of making and pursuing the objection and any appeal.
- 35.6 Where GST is payable by the Trustee or is charged to the Trustee for anything supplied in relation to a Fund, the Trustee may allocate that liability in any way it considers appropriate and may charge that liability to any Member Accounts, a Reserve Account or otherwise as it thinks fit. The Trustee may establish any accounts it may think necessary to record any liability for and payment of GST.

GST has the meaning given in the "A New Tax System (Goods and Services Tax) Act 1999".

## **SECTION FOUR**

### **RULES OF PART I - ACCUMULATION PLAN**

#### **1. ELIGIBILITY AND APPLICATION**

Participation in Part 1 will be restricted to:

- (a) employers wishing to provide retirement and/or other approved ancillary benefits for their employees from a regulated superannuation fund; and
- (b) eligible persons wishing to obtain retirement and/or other approved ancillary benefits from a regulated superannuation fund.

#### **2. ADMISSION OF PARTICIPATING EMPLOYERS WISHING TO PROVIDE BENEFITS FOR THEIR EMPLOYEES**

##### **2.1 Pre-Conditions to Acceptance**

The Trustee must not accept an application for admission as an Employer-Sponsor of a Member entitled to Benefits under this part unless the employer has:

- (a) completed the application;
- (b) completed a benefit specification;
- (c) agreed in writing to be bound by and comply with the Deed and these Rules; and
- (d) received from the Trustee in writing and in a clear and effective manner, such information, statements and reports in relation to the operation, management and performance of the relevant Division as the Complying Fund Requirements require in the circumstances to be given to the applicant.

##### **2.2 Eligibility and application for Membership**

###### **(a) Eligibility**

The employees of an Employer-Sponsor who is participating in this Part are eligible to join a Division of Part 1.

(b) **Pre-Conditions to Acceptance**

The Trustee must not accept an application by an employee unless:

- (i) the employee has been nominated for membership by his or her participating employer;
- (ii) the employee is eligible pursuant to the Complying Fund Requirements to be a member of a regulated superannuation fund;
- (iii) the employee has either completed an application to the satisfaction of the Trustee and agreed in writing to be bound by and comply with these Rules or the participating employer has completed an application on behalf of such employee; and
- (iv) there has been completed, in respect of the employee, a benefit specification.

(c) **Date of Acceptance**

Any employee who has applied to become a Member shall become a Member upon the date of acceptance by the Trustee of the employee's application or as otherwise specified by the Trustee in the notice delivered to the Member.

**3. ADMISSION OF OTHER ELIGIBLE PERSONS WISHING TO OBTAIN BENEFITS FOR THEMSELVES**

**3.1 Form of Application**

An eligible person who wishes to be admitted to a Division of Part 1 for the purpose of obtaining retirement and other approved ancillary benefits for themselves must lodge an application with the Trustee. At the time of lodgment of an application the applicant must:

- (a) complete the benefit specification;
- (b) unless the Trustee has not given the applicant a choice of investment strategies, complete an option nomination;
- (c) lodge any statement or notification required to accompany a contribution which is an eligible termination payment under the Complying Fund Requirements.

### **3.2 Pre-Conditions to Acceptance**

The Trustee must not accept an application by an eligible person for admission to a Division of Part 1 unless the applicant has:

- (a) completed the application;
- (b) completed a benefit specification;
- (c) agreed in writing to be bound by and comply with the Deed and these Rules;
- (d) where the applicant is required to choose an Investment Option the applicant has done so;
- (e) received from the Trustee in writing and in a clear and effective manner such information, statements and reports in relation to the operation, management and performance of the relevant Division as the Complying Fund Requirements require in the circumstances to be given to a prospective member.

### **3.3 Date of Acceptance**

An applicant will be a Member of a Division from the date of acceptance by the Trustee of the application or as otherwise specified by the Trustee in the notice delivered to the applicant.

## **4. PAYMENT OF BENEFITS**

### **4.1 Payment by Instalment**

All benefits other than a benefit payable to a Member prior to retirement from the workforce or a salary continuance benefit payable pursuant to this Part will be paid by instalments of such amount and in such form as the Trustee determines.

### **4.2 Lump Sum Payment**

A benefit payable to a Member prior to retirement from the workforce, other than a salary continuance benefit will be paid as a lump sum to the Member. A salary continuance benefit will be paid by instalments to the Member.



## **5. BENEFITS FOR MEMBERS**

### **5.1 Amount of Benefit**

#### **(a) Events other than ill health**

The amount of the benefit payable in respect of the Member other than a Benefit payable because of ill health is the total amount standing to the credit of the Members account and any benefit payable in the event of the death or total and permanent disablement of a Member shall include the amount of any insured benefit.

#### **(b) Ill health**

Upon a Member being “totally and temporarily disabled” which causes the Member’s cessation of gainful employment prior to the Member otherwise becoming entitled to a benefit under these rules, the Member may (subject to any waiting period applicable, in the case of an insured benefit with the relevant insurer or as determined by the Trustee) be entitled to receive a salary continuance benefit.

## **6. DRAWDOWNS**

### **6.1 Drawdown request**

Where the Trustee has agreed to defer payment of a benefit pursuant to these Rules but payment of the benefit has not been made, the Member may, subject at all times to the Complying Fund Requirements and in particular to the cashing restrictions, at any time request the Trustee in such form as the Trustee may from time to time prescribe a drawdown of part of that person’s interest in the Division (such request being defined in this Deed as “the drawdown request” and the amount of the drawdown request as “the drawdown”).

### **6.2 Drawdown Requirements**

A drawdown request:

- (a) must be for an amount which is not less than the minimum drawdown amount nominated in the current Disclosure Document or such other amount as may be nominated by the Trustee from time to time; and
- (b) must not cause the balance standing to the credit of the accounts maintained in respect of the person making the drawdown request to fall below the minimum account balance nominated in the

current Disclosure Document or such other amount as may be nominated by the Trustee from time to time.

### **6.3 Pay Drawdown**

The Trustee shall

- (a) unless the Trustee otherwise agrees, pay the drawdown to the relevant person on a date not less than 30 days from receipt of the drawdown request; and
- (b) debit the amount of the drawdown to the accounts maintained in respect of the relevant person.

## **7. FORFEITURE OF BENEFIT**

### **7.1 Application of Forfeited Benefit**

If a Member's benefit is forfeited under clause 25.13 the Trustee may apply the amount standing to the credit of the person's Member's account, then remaining in its hands or under its control for the maintenance and support or otherwise for the benefit of the Member and/or one or more of the Member's Dependants as the Trustee may in its discretion determine but whilst a Member remains gainfully employed any such application of the balance in the Member's Account by the Trustee must be with the agreement of the Regulator and be restricted to the maintenance and support of the Member and/or the Member's Dependants to the extent necessary to relieve the Member's or the Member's Dependants' genuine financial hardship or sickness accident or other misfortune causing hardship. The payment or application of moneys by the Trustee in pursuance of this sub-Rule shall be a complete discharge to the Trustee therefore.

### **7.2 Reimbursement to Employer**

If a Member's benefit is forfeited under clause 25.13 the Trustee may, subject to the Complying Fund Requirements, reimburse to an Employer-Sponsor by payment out of the amount recorded as standing to the credit of the person's Member's account pursuant to this Deed an amount not exceeding all costs and losses incurred by the employer in connection with the Plan but no part of the Member's minimum benefit or minimum requisite benefit (as applies and as determined in accordance with the Complying Fund Requirements) may be taken into account in determining the amount which may be reimbursed.

## **SECTION FOUR**

### **RULES OF PART 2— PENSION PLAN**

#### **1. ELIGIBILITY AND APPLICATION**

Participation in Part 2 will be restricted to Eligible Persons and any other suitable persons (in the opinion of the Trustee) wishing to obtain retirement and/or other approved ancillary benefits from a Regulated Superannuation Fund in the form of a Pension.

#### **2. FORM OF APPLICATION**

Every Applicant who wishes to be admitted to Part 2 for the purpose of obtaining retirement and other approved ancillary benefits in the form of a Pension will, if so required, by the Complying Fund Requirements or if the Trustee so requires, lodge an application with the Trustee. At the time of lodgment of any required application an Applicant must:

- (a) complete a Benefit Specification;
- (b) unless the Trustee has not given the applicant a choice of investments, nominate one of the Investment Options;
- (c) lodge any statement or notification required to accompany a Contribution which is required under the Complying Fund Requirements or the Trustee so requires.

##### **2.2 Pre-Conditions to Acceptance**

The Trustee must not accept an application unless the Applicant has:

- (a) completed an application;
- (b) completed a Benefit Specification;
- (c) completed any applicable pension request including, at the option of the Applicant or Member, the nomination of one or more reversionary pensioners;
- (d) agreed to be bound by the terms of this Deed;
- (e) where the Applicant is required to choose an Investment Option, the Applicant has done so; and

- (f) received from the Trustee in writing and in a clear and effective manner such information, statements and reports in relation to the operation, management and performance of the relevant Division as the Complying Fund Requirements require in the circumstances to be given to a prospective Member.

### **2.3 Date of Acceptance**

An Applicant will become a Member from the date of acceptance by the Trustees of the Applicant's application or as otherwise specified by the Trustee in the notice delivered to the Applicant or as otherwise specified by the Trustee to the Administrator (generally or specifically).

## **3. PENSIONS**

### **3.1 Pension payable in Accordance with Benefit Specification**

Where a Member has indicated in the Benefit Specification that upon a Benefit becoming payable the Benefit is to be paid as a Pension then the Pension is to be payable, subject to the Complying Fund Requirements, in the manner prescribed by the Benefit Specification.

Where a Member's Benefit Specification does not prescribe the form of Pension then any amount payable to or in respect of a person pursuant to this Part must (unless it is a preserved Benefit) be paid in the form of a Pension or be paid to or in respect of that person in part or in full as a lump sum.

### **3.2 Monthly Pension Payments**

Unless otherwise determined by the Trustee, all Pensions payable pursuant to this Part will be payable by monthly instalments. Unless otherwise allowed by the Complying Fund Requirements and agreed by the Trustee, the first instalment will fall due on the first day of the month next succeeding the month during which the entitlement to payment of the Pension arose but the initial instalment of any Pension may be a proportion of a full month's Pension if the Pension payment was not payable for the entire month.

## **4. DRAWDOWNS**

### **4.1 Drawdown request**

Where the Trustee has agreed to defer payment of a benefit pursuant to these Rules but payment of the benefit has not been made. the Member may, subject at all times to the Complying Fund Requirements and in particular to the cashing restrictions, at any time request the Trustee in

such form as the Trustee may from time to time prescribe a drawdown of part of that person's interest in the Division (such request being defined in this Deed as "the drawdown request" and the amount of the drawdown request as "the drawdown").

#### **4.2 Drawdown Requirements**

A drawdown request:

- (a) must be for an amount which is not less than the minimum drawdown amount nominated in the current Disclosure Document or such other amount as may be nominated by the Trustee from time to time; and
- (b) must not cause the, balance standing to the credit of the accounts maintained in respect of the person making the drawdown request to fall below the minimum account balance nominated in the current Disclosure Document or such other amount as may be nominated by the Trustee from time to time.

#### **4.3 Pay Drawdown**

The Trustee shall,

- (a) unless the Trustee otherwise agrees, pay the drawdown to the relevant person on a date not less than 30 days from receipt of the drawdown request; and
- (b) debit the amount of the drawdown to the accounts maintained in respect of the relevant person.

### **5. APPLICATION OF FORFEITED BENEFIT**

If the entitlement of a Member is forfeited under clause 25.13, the Trustee may apply the amount standing to the credit of the person's Pension Account then remaining in its hands or under its control for the maintenance and support or otherwise for the benefit of the person and/or such one or more of the person's Dependents and/or the beneficiary or beneficiaries or other participating persons of this Part 2 at the relevant distribution date chosen by the Trustee as the Trustee may in its discretion determine and for such purpose or purposes as the Complying Fund Requirements may specify.

### **6. FOREGONE BENEFITS**

If any Assets of a Division remain after all beneficiaries of that Division have ceased to be Members or persons who are otherwise presently

entitled to Benefits from the Division those assets shall be dealt with at the discretion of the Trustee subject only to the Complying Fund Requirements.