

# **Trust Deed**

## **Guild Retirement Fund**

**Guild Trustee Services Pty Limited**  
ABN 84 068 826 728

Dated 29 April 2005

Includes amendments made by:

- Deed of Amendment dated 23 May 2007
- Deed of Amendment dated 5 March 2013
- Deed of Amendment dated 22 November 2016
- Deed of Amendment dated 2 December 2021

Current as at 2 December 2021

Melbourne office  
Ref: CHASSEM.BULLINJ.7374304

## TABLE OF CONTENTS

|           |  |           |
|-----------|--|-----------|
| <b>1.</b> | <b>Definitions and Interpretation</b>      | <b>7</b>  |
| 1.1       | Definitions                                | 7         |
| 1.2       | Interpretation                             | 14        |
| 1.3       | Defined Terms                              | 15        |
| 1.4       | References to Relevant Law                 | 15        |
| 1.5       | Perpetuity Period does not apply           | 15        |
| <b>2.</b> | <b>Purposes of the Fund</b>                | <b>16</b> |
| <b>3.</b> | <b>Fund</b>                                | <b>16</b> |
| 3.1       | Constitution of the Fund                   | 16        |
| 3.2       | Establishment of Plans                     | 16        |
| 3.3       | Acquiring and Allocating of Assets         | 16        |
| <b>4.</b> | <b>Units</b>                               | <b>17</b> |
| 4.1       | Nature of Units                            | 17        |
| 4.2       | Classes of Units                           | 17        |
| 4.3       | Fractions of Units                         | 17        |
| 4.4       | Creation of Additional Units               | 17        |
| 4.5       | Consolidation and Division of Units        | 17        |
| 4.6       | Calculation of Entry or Exit Price         | 17        |
| <b>5.</b> | <b>Appointment and Removal of Trustees</b> | <b>18</b> |
| 5.1       | The Trustee                                | 18        |
| 5.2       | Appointment to conform with law            | 18        |
| 5.3       | Compulsory Retirement                      | 18        |
| 5.4       | Voluntary Retirement                       | 18        |
| 5.5       | Appointment of new Trustee                 | 18        |
| 5.6       | Release of the Retiring Trustee            | 19        |
| <b>6.</b> | <b>Administration</b>                      | <b>19</b> |
| 6.1       | Management and Administration              | 19        |
| 6.2       | Expenses                                   | 19        |
| 6.3       | Commission                                 | 20        |
| 6.4       | Remuneration                               | 21        |
| 6.5       | Agents                                     | 22        |
| 6.6       | Records and Statistics                     | 22        |
| 6.7       | Accounts and Reports                       | 23        |
| 6.8       | Confidential Information                   | 23        |
| 6.9       | Receipts                                   | 23        |
| 6.10      | Information to Members                     | 23        |
| 6.11      | Planner Fees                               | 23        |
| <b>7.</b> | <b>Trustee's Powers</b>                    | <b>23</b> |
| 7.1       | Committees                                 | 23        |
| 7.2       | Contracts                                  | 24        |
| 7.3       | Power to effect policies                   | 24        |
| 7.4       | Bank accounts                              | 24        |
| 7.5       | Power to borrow                            | 24        |
| 7.6       | Power to Deduct Taxes                      | 24        |
| 7.7       | Powers and Discretions                     | 25        |
| 7.8       | Delegation by Trustee                      | 25        |

|            |  |           |
|------------|--|-----------|
| 7.9        | Legal Proceedings                                | 25        |
| 7.10       | Arbitration                                      | 25        |
| 7.11       | Trustee may act on advice                        | 25        |
| <b>8.</b>  | <b>Trustee's Indemnity</b>                       | <b>26</b> |
| 8.1        | Indemnity  | 26        |
| 8.2        | Lien   | 26        |
| 8.3        | Extent of Indemnity                              | 26        |
| 8.4        | Insufficiency of Fund                            | 26        |
| 8.5        | Liability of Delegates                           | 26        |
| 8.6        | Overriding Provision                             | 26        |
| <b>9.</b>  | <b>Auditor</b>                                   | <b>26</b> |
| 9.1        | Appointment                                      | 26        |
| 9.2        | Remuneration                                     | 27        |
| 9.3        | Access to Records                                | 27        |
| 9.4        | Reports  | 27        |
| <b>10.</b> | <b>Investments</b>                               | <b>27</b> |
| 10.1       | Investment of Fund Money                         | 27        |
| 10.2       | Pooled Investments Permitted                     | 27        |
| 10.3       | Investments in other products of the Trustee     | 27        |
| 10.4       | Underwriting Powers                              | 27        |
| 10.5       | Custodian Trustees and Investment Managers       | 27        |
| 10.6       | Additional Powers relating to Investments        | 28        |
| 10.7       | Member Investment Choice                         | 28        |
| <b>11.</b> | <b>Admission</b>                                 | <b>28</b> |
| 11.1       | Application                                      | 28        |
| 11.2       | Applications for Membership                      | 28        |
| 11.3       | Application to Join as Standard Employer-Sponsor | 29        |
| 11.4       | Commencement of Membership                       | 29        |
| 11.5       | Trustee can refuse to accept Applications        | 29        |
| 11.6       | Register   | 29        |
| 11.7       | Cessation of Membership                          | 30        |
| 11.8       | Cooling Off                                      | 30        |
| <b>12.</b> | <b>Information to Trustee</b>                    | <b>30</b> |
| 12.1       | Medical Examinations                             | 30        |
| 12.2       | Misleading Statements                            | 31        |
| 12.3       | Information to Trustee and Confidentiality       | 31        |
| <b>13.</b> | <b>Accounts and Valuation</b>                    | <b>31</b> |
| 13.1       | Member Accounts                                  | 31        |
| 13.2       | Other Accounts                                   | 32        |
| <b>14.</b> | <b>General Provisions Governing Benefits</b>     | <b>32</b> |
| 14.1       | Overriding Provision Relating to Benefits        | 32        |
| 14.2       | Rights to benefits                               | 33        |
| 14.3       | Claims for benefits                              | 33        |
| 14.4       | Insured benefits                                 | 33        |
| 14.5       | Adjustment to Insured Benefits                   | 34        |
| 14.6       | Benefits Strictly Personal                       | 34        |
| 14.7       | Circumstances Triggering Release of Benefits     | 34        |
| 14.8       | Proofs   | 35        |

|            |   |           |
|------------|---|-----------|
| 14.9       | Currency  | 36        |
| 14.10      | Benefits Paid in Advance  | 36        |
| <b>15.</b> | <b>Specific Requirements Governing Benefits</b>                           | <b>36</b> |
| 15.1       | Requirement for Preservation  | 36        |
| 15.2       | Voluntary Payment of Unrestricted Benefits                                | 36        |
| 15.3       | Compulsory Payment of benefits (other than on death)                      | 37        |
| <b>16.</b> | <b>Benefits on Death</b>  | <b>37</b> |
| 16.1       | Payment of Benefits on Death of a Member                                  | 37        |
| 16.2       | Nominated Dependants  | 38        |
| 16.3       | Binding Death Benefit Nominations   | 38        |
| 16.4       | Ascertaining Dependants   | 38        |
| 16.5       | Application of Unpaid benefits  | 39        |
| 16.6       | Beneficiary under Legal Disability  | 39        |
| 16.7       | Discharge of Trustee  | 40        |
| <b>17.</b> | <b>Pension Benefits</b>   | <b>40</b> |
| 17.1       | Pension Benefits  | 40        |
| 17.2       | Establishment Conditions  | 40        |
| 17.3       | Pension Accounts  | 40        |
| 17.4       | Transfers to the Pension Account of a Member                              | 40        |
| 17.5       | Frequency of Payment  | 40        |
| 17.6       | Changing Frequency of Payment   | 40        |
| 17.7       | Minimum Annual Payment  | 40        |
| 17.8       | Selecting Pension Level   | 41        |
| 17.9       | Notification of minimum/maximum payments                                  | 41        |
| 17.10      | Selection of Pensions Payments  | 41        |
| 17.11      | Amount of Payments where amount not selected                              | 41        |
| 17.12      | Commutation   | 41        |
| 17.13      | Trustee may set limits on the amount of pension commuted                  | 41        |
| 17.14      | Amount of Lump Sum payments on Full Commutation                           | 41        |
| 17.15      | Amount of Lump Sum payments on Partial Commutation                        | 41        |
| 17.16      | Termination of Pension  | 41        |
| 17.17      | Pension Payments on the Death of a Member                                 | 42        |
| 17.18      | Powers of Beneficiary   | 42        |
| 17.19      | Pension Payments cannot be used as Security                               | 42        |
| <b>18.</b> | <b>Provisions Regarding Contributions</b>                                 | <b>42</b> |
| 18.1       | Limit of Contributions  | 42        |
| 18.2       | Commencement and Termination of Contributions by Members and Contributors | 42        |
| 18.3       | Employer Contributions  | 42        |
| 18.4       | Member Contributions  | 42        |
| 18.5       | Contributions by Contributor  | 42        |
| 18.6       | Excessive Contributions   | 43        |
| 18.7       | Unpaid Contributions  | 43        |
| 18.8       | Late Contributions and Non-Payment  | 43        |
| 18.9       | Additional Contributions  | 43        |
| 18.10      | Refund of Payment   | 43        |
| 18.11      | Deduction of Contributions  | 43        |
| 18.12      | Automatic Deduction of Contributions                                      | 43        |
| 18.13      | Splittable Contributions  | 44        |

|            |   |           |
|------------|---|-----------|
| <b>19.</b> | <b>Redemption Provisions</b>                                  | <b>44</b> |
| 19.1       | Terms of redemption   | 44        |
| 19.2       | Exit Price  | 44        |
| 19.3       | Units to be cancelled   | 44        |
| 19.4       | Funding of redemption   | 45        |
| 19.5       | Realisation of Assets   | 45        |
| 19.6       | Entries in Register   | 45        |
| 19.7       | Time for payment of benefit                                   | 45        |
| 19.8       | Transfer of assets in specie                                  | 45        |
| <b>20.</b> | <b>Valuation of Fund and Calculation of Unit Prices</b>       | <b>45</b> |
| 20.1       | Valuation Dates   | 45        |
| 20.2       | Net Asset Value   | 46        |
| 20.3       | Valuation Register  | 46        |
| 20.4       | Valuation of investments                                      | 46        |
| 20.5       | Calculation of Entry Price                                    | 46        |
| 20.6       | Calculation of Exit Price                                     | 46        |
| 20.7       | Transaction Costs   | 46        |
| 20.8       | Unit Price when converting Units to another Investment Option | 46        |
| <b>21.</b> | <b>Income of the Fund</b>                                     | <b>47</b> |
| 21.1       | Trustee to receive income                                     | 47        |
| 21.2       | Calculation of Net Income                                     | 47        |
| 21.3       | Determination and Reinvestment of Net Income                  | 47        |
| 21.4       | Special Provisions regarding income                           | 47        |
| <b>22.</b> | <b>Conversion of Units</b>                                    | <b>47</b> |
| 22.1       | Conversion Notice   | 47        |
| 22.2       | Redemption of Units and Issue of Units in Specified Option    | 48        |
| <b>23.</b> | <b>Transfers to and from Approved Arrangements</b>            | <b>48</b> |
| 23.1       | Transfers to Approved Arrangements                            | 48        |
| 23.2       | Unclaimed Money and Approved Arrangements                     | 48        |
| 23.3       | Transfers from Approved Arrangements                          | 48        |
| 23.4       | Conditions  | 48        |
| <b>24.</b> | <b>MySuper Members</b>  | <b>49</b> |
| 24.1       | MySuper provisions priority                                   | 49        |
| 24.2       | MySuper investment strategy                                   | 49        |
| 24.3       | MySuper benefits  | 49        |
| 24.4       | MySuper costs allocation                                      | 49        |
| 24.5       | MySuper Contributions   | 49        |
| 24.6       | Transfer of MySuper Interests                                 | 49        |
| 24.7       | No pension from MySuper                                       | 50        |
| <b>25.</b> | <b>Meetings</b>   | <b>50</b> |
| 25.1       | Meetings of the Members                                       | 50        |
| 25.2       | Requirements for holding meeting on requisition               | 50        |
| 25.3       | Notice of meeting   | 50        |
| 25.4       | Quorum  | 50        |
| 25.5       | Chairman  | 51        |
| 25.6       | Manner of voting  | 51        |
| 25.7       | Counting of votes   | 51        |
| 25.8       | Voting by Members of unsound mind                             | 51        |

|            |  |           |
|------------|--|-----------|
| 25.9       | Objection to qualifications of voter                               | 52        |
| 25.10      | Proxies  | 52        |
| 25.11      | Signature of proxy   | 52        |
| 25.12      | Who may act as proxy   | 52        |
| 25.13      | Deposit and validity of proxy                                      | 52        |
| 25.14      | Form of proxy  | 52        |
| 25.15      | Validity of vote given by proxy                                    | 53        |
| 25.16      | Demand for poll  | 53        |
| 25.17      | Manner of poll   | 53        |
| 25.18      | Adjournment of meeting   | 53        |
| 25.19      | Demand for poll on election of chairman and adjournment of meeting | 53        |
| 25.20      | Effect of resolution   | 53        |
| 25.21      | Alteration, etc. to Deed   | 53        |
| 25.22      | Minutes  | 54        |
| <b>26.</b> | <b>Policy Committees</b>   | <b>54</b> |
| <b>27.</b> | <b>Amendment of Deed</b>   | <b>55</b> |
| 27.1       | General Power of Amendment   | 55        |
| 27.2       | Amendments to Secure Favourable Tax Treatment                      | 56        |
| 27.3       | Effective Date of Amendments                                       | 56        |
| 27.4       | Notification to Members  | 56        |
| <b>28.</b> | <b>Miscellaneous</b>   | <b>56</b> |
| 28.1       | Powers of Employer not Affected                                    | 56        |
| 28.2       | Employers not Fiduciary  | 57        |
| 28.3       | Employment Dates   | 57        |
| 28.4       | Appointment of Receiver  | 57        |
| 28.5       | Determination of Disputes  | 57        |
| 28.6       | Governing Law  | 57        |
| <b>29.</b> | <b>Notice</b>  | <b>57</b> |
| 29.1       | Methods of Notice  | 57        |
| 29.2       | Additional Methods of Notice                                       | 58        |
| 29.3       | Deemed Notice  | 58        |
| <b>30.</b> | <b>Complaints and Enquiries Procedures</b>                         | <b>58</b> |
| <b>31.</b> | <b>Overriding Compliance Provisions</b>                            | <b>58</b> |
| 31.1       | Overriding Application of Relevant Law                             | 58        |
| 31.2       | Exclusion of Liability   | 59        |
| <b>32.</b> | <b>Statutory Financial Management of Fund</b>                      | <b>59</b> |
| <b>33.</b> | <b>Family Law</b>  | <b>59</b> |
| 33.1       | Trustee's Powers   | 59        |
| 33.2       | Non-Member Spouse  | 60        |

# Trust Deed

Date 29 April 2005

## Parties

1. **Guild Trustee Services Pty Limited** ABN 84 068 826 728 of 171 Collins Street, Melbourne, Victoria 3000 (**the Trustee**).

## WHEREAS

- A. The Trustee wishes to establish by this Deed an indefinitely continuing superannuation trust fund to provide benefits solely for and in respect of such persons who in accordance with the provisions of this Deed become Members.
- B. The Trustee has agreed to act as the first Trustee of the Fund as testified by its execution of this Deed.
- C. The Fund came into operation on the date of this Deed.
- D. The Trustee is empowered as of and from the date of this Deed to accept contributions and deposits and to hold the same upon the trusts contained in this Deed.
- E. This Deed is made with the intent that not only the Trustee but also the parties who are or become Employers and Members will be bound hereby and entitled to the benefits hereof.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed, unless the context otherwise requires or the contrary intention appears:

**Accounting Standards** means the applicable Australian Accounting Standards and generally accepted accounting principles;

**Accrual Period** means the period of one calendar month ending on the first day of each month or such other period as the Trustee determines;

**Activity Fee** means the fee payable to the Trustee pursuant to clause 6.4(a)(iv);

**Administration Fee** means the fee payable to the Trustee pursuant to clause 6.4(a)(i);

**Advice Fee** means the fee payable to the Trustee pursuant to clause 6.4(a)(v) ;

**Allocated Pension** means a pension that satisfies the requirements of subregulation 1.06(1)(4) of SIS;

**Approved Arrangement** means:

- (a) a complying superannuation fund within the meaning of the Tax Act;
- (b) a complying approved deposit fund within the meaning of the Tax Act;
- (c) an annuity which is issued on terms and conditions which comply with the relevant requirements of SIS in relation to deferred annuities;
- (d) an eligible rollover fund within the meaning of SIS; or

- (e) such other fund or annuity or other entity as may from time to time be approved by the Trustee to or from which amounts may, in the opinion of the Trustee, be paid or transferred to or from the Fund in respect of Members without prejudicing the taxation concessions available to the Fund or otherwise causing the Fund to be in breach of, or to fail to comply with, any relevant requirements of a Relevant Law;

**APRA** means the Australian Prudential Regulation Authority established under the *Australian Prudential Regulation Authority Act 1998* or any body replacing or succeeding that Authority;

**ASIC** means the Australian Securities and Investments Commission as established under the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* or any body replacing or succeeding that Commission;

**Assets** means any assets in respect of the Fund or an Investment Option as defined in accordance with the Accounting Standards;

**Auditor** means a person who is an approved auditor within the meaning of SIS, and for any particular purpose under this Deed, **the Auditor** means the person or firm of persons appointed for the time being as Auditor to the Fund pursuant to clause 9.1;

**Beneficiary** means a person (including a Member) who is presently entitled to receive a benefit from the Fund in accordance with this Deed (including, without limitation, a benefit payable under the Deed as previously in force from time to time);

**Binding Death Benefit Nomination** means a nomination by a Member to the Trustee in writing, in accordance with clause 16.3, specifying the manner in which any benefit payable pursuant to clause 16.1 is to be paid and expressly stating that the nomination is to be binding upon the Trustee;

**Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Victoria;

**Buy Sell Spread** means the fee payable to the Trustee pursuant to clause 6.4(a)(vii);

**Child** in relation to a Member, means a child being the issue of that Member or of his or her Spouse, an adopted child, an ex-nuptial child, a foster child or a ward either of a Member or of a Spouse of a Member or a minor who in the opinion of the Trustee is under the care, custody or control of a Member or Spouse of a Member, and **children** shall have a corresponding meaning;

**Choice Interest** means a beneficial interest in a Member Account which is not a MySuper Interest;

**Choice Member** means any Member to whom a Choice Member Account is attributed;

**Choice Member Account** means a Member Account which relates to a Member's Choice Interest;

**Compliance Provision** means any provision of this Deed (including any provision included in this Deed pursuant to clause 31) to the extent that such provision requires or provides for compliance with or the taking account of a Relevant Law or any tax or other government impost which is or may become payable in connection with the Fund or anything done or to be done pursuant to this Deed including, without limitation, the payment or transfer of money or property to or from the Fund and the payment of any benefit from the Fund;



**Complying Annuity** means an annuity acquired by the Trustee on behalf of a Member from a Insurer or as otherwise permitted under the Relevant Law and which satisfies the minimum requirements set down in the Tax Act;

**Conversion Notice** means a request made to the Trustee by a Member in accordance with clause 22;

**Contributions** means any contribution paid to the Fund by or on behalf of an Employer, a Member or a Contributor and includes any amount transferred or rolled over to the Fund in respect of a Member or a Standard Employer-Sponsor;

**Contributor** means a person other than an Employer or a Member who is entitled to make Contributions to this Fund in respect of a Member under SIS and from whom the Trustee has agreed to accept contributions;

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

**Custodian** means a custodian trustee appointed pursuant to the provisions of clause 10.5;

**Deed** means this Trust Deed;

**Dependant** means in relation to a Member or Beneficiary:

- (a) the Spouse or any Child of the Member or Beneficiary; and
- (b) any other person who in the opinion of the Trustee has, or in the case of a deceased Member or Beneficiary had at the time of his or her death, an interdependency relationship with the Member or Beneficiary within the meaning given to that term in SIS;

**Derivative** has the same meaning as is given to that term in the Corporations Act;

**Eligible Application** means an Eligible Application under SIS;

**Eligible Employee** means an Employee who is approved for the time being by the Trustee (either generally or specifically) as an Eligible Employee for the purposes of the whole or any particular provision or Part of this Deed;

**Employee** means a person who is in the Service of an Employer otherwise than on a temporary basis and includes a director of the Employer;

**Employer** means:

- (a) a Standard Employer-Sponsor; and
- (b) any person or persons carrying on business in succession to the Standard Employer-Sponsor,

and in relation to an Employee means the person or persons for the time being employing him or her and in relation to a former Employee means the person or persons by which the former Employee was last employed;

**Entitlement** means an amount (whether in the nature of a benefit or not) which a person is entitled to have paid out from the Fund, or where the context indicates, from another Approved Arrangement;

**Entry Price** means the Unit price at which a Member acquires an equitable interest in the Fund;

**Exit Fee** means the fee payable to the Trustee pursuant to clause 6.4(a)(vi);

**Exit Price** means the Unit price at which a Member realises an interest in the Fund;

**Full-time Employment** means gainful employment for 30 hours or more weekly or such greater or lesser period as prescribed from time to time by SIS;

**Fund** means the superannuation scheme called the Fund Name and, where the context requires, means all moneys and other assets held by or on account of or for the Trustee pursuant to this Deed;

**Fund Name** means the Guild Retirement Fund and/or any other name the Trustee may decide to attribute to the Fund from time to time;

**Gross Assets** means in respect of the Fund or an Investment Option (whichever is applicable) the Assets of the Fund or Investment Option before allowances for Transaction Costs and before the deduction of Liabilities;

**Gross Income** means in respect of the Fund:

- (a) all interest received or accrued but not received from any source;
- (b) all dividends received;
- (c) all profits, accretions, and other gains which the Trustee determines should be included in such income in accordance with generally accepted accounting principles;

**Insurance Fee** means the fee payable to the Trustee pursuant to clause 6.4(a)(iii);

**Insurer** means any body corporate which carries on life insurance business in Australia as defined in the *Life Insurance Act 1995*;

**Investment Fee** means the fee payable to the Trustee pursuant to 6.4(a)(ii);

**Investment Option** means an investment option of a Plan established by the Trustee in accordance with clause 3.2(c);

**Liabilities** means any liabilities in respect of the Fund or an Investment Option as defined in accordance with the Accounting Standards;

**Market Linked Pension** has the same meaning as is given to that term in SIS;

**Market Value** means the market value of an asset or, where this cannot be ascertained, the valuation methods and policies applied by the Trustee which must be capable of resulting in an independently verifiable calculation of the Net Asset Value of the Fund or the Net Asset Value of an Investment Option;

**Member** means a person who has been admitted to membership of the Fund as a Member and includes a Choice Member and a MySuper Member but does not include:

- (a) a person who has died; or
- (b) a person in respect of whom all benefits to which that person could have become entitled under the Fund have been paid or have otherwise ceased or been terminated;

**Membership** means membership of the Fund;

**Member Account** means the account established and maintained in respect of a Member pursuant to clause 13.1;

**Member-Spouse** means a member spouse as defined under the Relevant Law;

**MySuper Interest** means a beneficial interest in a Member Account which the Trustee determines, in accordance with the Relevant Law, shall be a MySuper Member Account;

**MySuper Member** means any Member to whom a MySuper Member Account is attributed;

**MySuper Member Account** means a Member Account which relates to Member's MySuper Interest and which complies with the requirements in clause 24;

**Net Asset Value** means the net asset value of the Fund or an Investment Option (whichever is applicable) determined in accordance with clause 20.2;

**Net Income** means the net income determined in accordance with clause 21.2;

**Nominated Dependant** means a Dependant of a Member nominated in accordance with clause 16.2 and references to Nominated Dependents shall be construed as references to the most recent and then current nomination;

**Non-Member Spouse** means a non-member spouse as defined under the Relevant Law;

**Normal Retirement Date** means the day on which a Member attains the age of sixty-five (65) years or such other age as is specified in SIS as being the minimum age at which benefits may be paid to a Member without that Member having retired, or such other age as the Trustee determines and which satisfies SIS;

**Optional Fixed Fee** means a fee deductible from a Member Account pursuant to clause 6.11;

**Part-time Employment** means gainful employment for 10 hours or more per week but less than 30 hours per week or such other period as may be prescribed from time to time by the Relevant Law;

**Pension Account** with respect to a pension payable to or with respect to a Member, the Member Account designated by the Trustee as the Member Account to which instalments of pension will be debited;

**Plan** means any plan of the Fund as constituted in writing under clause 3.2;

**Planner Fees** means a fee deductible from a Member Account pursuant to clause 6.11;

**Planner Servicing Fee** means a fee deductible from a Member Account pursuant to clause 6.11(a);

**Policy Committee** means a board, committee or other body that:

- (a) represents a particular Employer and the Members employed by that Employer; and
- (b) is appointed for the purpose of advising and consulting with the Trustee on matters relating to the participation in the Fund of the Members employed by that Employer.

**Preservation** means in relation to a benefit or an Entitlement, a requirement that the benefit only be paid out in the restricted circumstances stipulated for the payment of Preserved Benefits;

**Preserved Benefits** has, (subject to the rules of the relevant Approved Arrangement, which require or have the effect of causing certain benefits to be Preserved Benefits where those benefits would otherwise have been classified differently) the same meaning as provided for in SIS;

**Qualified Valuer** means a person competent to make a required valuation, recommendation or report in relation to Assets of the Fund;

**Register** means the register maintained pursuant to the provisions of clause 11.6;

**Regulator** means either or both of APRA or ASIC or any of their delegates acting in a regulatory capacity for the Fund;

**Relevant Law** means:

- (a) SIS;
- (b) the Tax Act;
- (c) the Corporations Act as amended from time to time and any regulations prescribed thereunder;
- (d) *Family Law Act 1975 (Cth)* as amended from time to time and any regulations prescribed thereunder; and
- (e) any other present or future law of the Commonwealth of Australia or any State or Territory thereof which:
  - (i) the Fund, this Deed, or the Trustee must comply with or satisfy in order to secure or better secure any concession in respect of any tax or other government impost granted or available to the Fund or in order to avoid what the Trustee may consider to be a relevant penalty, detriment or disadvantage; and
  - (ii) the Trustee may determine to be a Relevant Law for the purposes of this Deed; and
  - (iii) a reference to "requirement", "relevant requirement" or a similar expression when used in relation to a Relevant Law shall be construed as a reference to the standards or other provisions of the Relevant Law which must be complied with or satisfied in order to secure or better secure such concessions or avoid such a penalty, detriment or disadvantage;

**Restricted Non-Preserved Benefits** has the same meaning ascribed to that term by SIS;

**Service** means

- (a) actual employment with the Employer which includes:
  - (i) statutory maternity leave;
  - (ii) any other period which the Trustee agrees shall be included (whether generally or in relation to any particular category or case);
- (b) any other period which the Trustee determines shall be included as Service (whether generally or in relation to any particular category or case and whether or not the Member is actually employed by an employer provided that such determination does not breach a relevant requirement of a Relevant Law;

**SIS** means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth of Australia as amended from time to time and includes any regulations prescribed thereunder;

**Spouse** means a person who at the date of death of a Member was in the opinion of the Trustee:

- (a) legally married to the deceased Member and living with him or her on a permanent and bona fide domestic basis;
- (b) legally married to the deceased Member and in the opinion of the Trustee substantially financially dependent upon him or her; or
- (c) not legally married to the deceased Member and in the opinion of the Trustee was a person ordinarily living with the deceased Member as his or her spouse on a permanent and bona fide domestic basis;

**Spouse Account** means an account established by the Trustee in respect of the Spouse of each Member who makes an election under clause 18.13;

**Standard Employer-Sponsor** has the meaning ascribed to that term by SIS;

**Superannuation Interest** means a superannuation interest under the Relevant Law;

**Switching Fee** means the fee payable to the Trustee pursuant to clause 6.4(a)(vii);

**Tax or Taxes** includes all stamp, financial institutions, registration or other duties, income tax, capital gains tax, bank accounts debits tax and other taxes, levies, imposts, deductions, surcharges and charges whatsoever (including in respect of any duty imposed on receipts of liabilities of financial institutions any amount paid in respect thereof to another financial institution) together with interest thereon and penalties with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof and including without limitation all amounts imposed by or charged in relation to the *Duties Act 2000* of Victoria (or any similar or corresponding legislation in any other State or Territory of Australia), the *Bank Accounts Debits Tax Administration Act 1982*, the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* each of the Commonwealth of Australia;

**Tax Act** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* of the Commonwealth of Australia as amended from time to time and includes any regulations prescribed thereunder;

**Temporary Disablement** in relation to a Member, means where pursuant to this Deed the Trustee has effected a policy of insurance under which insurance is or may become payable in respect of the Member or a group of Members the Trustee shall determine that Temporary Disablement shall have the same meaning as is given to those words (or any expression of similar import) for the purposes of such policy in which event any determination by the relevant Insurer as to whether or not a Member is so disabled in terms of such policy shall be binding on all persons interested for the purposes of this Deed;

**Total and Permanent Disablement** in relation to a Member, means where pursuant to this Deed the Trustee has effected a policy of insurance under which insurance is or may become payable in respect of the Member or a group of Members the Trustee shall determine that Total and Permanent Disablement shall have the same meaning as is given to those words (or any expression of similar import) for the purposes of such policy in which event any determination by the relevant Insurer as to whether or not a Member is so disabled in terms of such policy shall be binding on all persons interested for the purposes of this Deed;

**Totally and Permanently Disabled** shall have a meaning which corresponds to Total and Permanent Disablement;

**Transaction Costs** means the aggregate of:

- (a) any expenses incurred by the Trustee in accordance with clause 6.2;
- (b) any remuneration payable to the Trustee in accordance with clause 6.4;
- (c) any remuneration payable by the Trustee in accordance with clause 6.11; and
- (d) any other fees, expenses or remuneration payable to or by the Trustee in accordance with this Deed or the Relevant Law;

**Transferable Benefits** means transferable benefits as defined under SIS;

**Trustee** means the trustee for the time being of the Fund whether initial additional or substituted;

**Trustee Expense Recovery** means the amount payable to the Trustee pursuant to clause 6.2(a)(xi);

**Unclaimed Money** has the meaning ascribed to that expression in SIS;

**Unit** means an undivided part or share in the beneficial interest in a Fund as described in clause 4;

**Unrestricted Benefits** means:

- (a) any of the Entitlements of a Member in the Fund which were or which arise from "unrestricted non-preserved benefits", within the meaning of SIS, rolled over or transferred or otherwise paid to the Fund; and
- (b) any other of the Entitlements of a Member in the Fund which have ceased to be subject to Preservation as provided for in the Deed;

**Valuation Date** means any date upon which the Net Asset Value of the Fund is required to be ascertained pursuant to clause 20;

**Valuation Register** means the register of investments kept pursuant to clause 20.2;

**Year of Income** means the year ending on 30 June of each year or any other date as determined by the Trustee from time to time and approved by the Regulator if required.

## 1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of this Deed;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;

- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means 12 months;
- (i) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (l) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (m) money amounts are stated in Australian currency unless otherwise specified; and
- (n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

### 1.3 Defined Terms

The first letter of words and expressions defined in this Deed are indicated by capital or lower case letters for convenience only and the absence of a capital or lower case letter shall not alone imply that the word or expression is used with a meaning different from that given by its definition.

### 1.4 References to Relevant Law

The extent to which this Deed and the Fund generally must comply with the requirements of a Relevant Law is governed by clause 31 and accordingly:

- (a) notwithstanding that for ease of interpretation an individual provision (the **relevant provision**) of this Deed includes, or is subject to, the requirements of a Relevant Law by express reference (the **specified provision**), the relevant provision may also include, or be subject to, another requirement of the Relevant Law or another Relevant Law and the express reference to the specified provision shall not of itself result in a contrary inference; and
- (b) a provision of this Deed not being a specified provision may be subject to a Relevant Law or a requirement of a Relevant Law even though the said provision does not specifically refer to such Relevant Law or requirement.

### 1.5 Perpetuity Period does not apply

In accordance with section 343 of SIS the rules of law relating to perpetuities do not apply to this Fund. If for whatever reason the rules of law relating to perpetuities do apply to this

Fund, the Fund will terminate on the day immediately preceding the twenty first anniversary of the date of death of the last survivor of the descendants of His Late Majesty King George VI living at 9 September 1992.

## **2. Purposes of the Fund**

The purposes of the Fund are:

- (a) to provide superannuation benefits for Members upon their retirement from the Service or on their having reached the age specified in SIS as the age at which benefits may be paid to a Member who has not retired from Service, and on the death of Members for their Dependants; and
- (b) such ancillary purposes as may from time to time be approved by the Regulator.

## **3. Fund**

### **3.1 Constitution of the Fund**

The Fund shall consist of:

- (a) all investments, cash and other assets transferred to the Trustee pursuant to the provisions of this Deed;
- (b) all contributions by Members or Contributors pursuant to this Deed;
- (c) all amounts contributed or paid by an Employer to the Trustee;
- (d) any grants or other gifts, donations, legacies or other benefactions by whomsoever made;
- (e) the proceeds of any insurance policy and any bonus paid by an insurer in respect of an insurance policy; and
- (f) the income earned by the investments and other assets and by investment of the said contributions, amounts or assets transferred, grants, gifts, donations, legacies and benefactions and any other profit gains or accretions earned or derived therefrom.

### **3.2 Establishment of Plans**

- (a) The Trustee may establish one or more Plans within the Fund and set the terms and conditions applying to participation by a Member in each such Plan.
- (b) If the terms and conditions of a particular Plan established under clause 3.2(a) are inconsistent with any provision in the Deed then the provisions of the Deed shall prevail unless terms and conditions of the Plan expressly provide to the contrary.
- (c) A Plan may contain one or more Investment Options as designated by the Trustee from time to time.

### **3.3 Acquiring and Allocating of Assets**

The Trustee may acquire certain assets or determine that certain assets are held in respect of a particular Plan or in respect of particular Members of a particular Plan in which case those assets shall only be available for the purposes of that Plan or those Members or in respect of liabilities of that Plan or in relation to those Members as the case may be.



## **4. Units**

### **4.1 Nature of Units**

- (a) The beneficial interest in the Fund is divided into Units.
- (b) All Units within a Plan will rank equally in all respects except as otherwise provided for in this Deed.
- (c) Units will not confer any interest or right in any particular part of that Plan or any investment. A Unit does not confer an interest or right in a particular investment nor does a Unit in a Plan confer any interest or right in any other Plan.
- (d) A Unit will be deemed to have been issued when the name of the Member entitled to the Unit has been entered in the Register.

### **4.2 Classes of Units**

The Trustee may issue different classes of Units in respect of a Plan. At the time of issue of any Units, the Trustee must identify the class to which the Units belong and maintain that information in the Register. The Trustee may, but need not, require an application for Units to specify the class of Units to which the application relates.

### **4.3 Fractions of Units**

- (a) Fractions of a Unit may be issued by the Trustee.
- (b) Where any calculation performed under this Deed results in the issue of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (c) The provisions of this Deed relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.
- (d) Any excess application or other money or property which results from rounding becomes an asset of the Fund.

### **4.4 Creation of Additional Units**

As and when any contribution is made to the Fund additional Units are to be issued pursuant to the provisions of this Deed, the number of additional Units created will be such number computed by dividing the amount of cash so added and, in the case of additions to the Fund made in a form other than cash, the Market Value thereof as at the date on which such addition becomes an investment of the Fund (or, where the purchase price for such addition is less than the Market Value thereof, then such purchase price) by the Entry Price of the Units calculated in accordance with clause 20.5.

### **4.5 Consolidation and Division of Units**

Subject to clause 20.8, Units may be consolidated or divided as determined by the Trustee provided that such consolidation or division does not alter the ratio of Units held in respect of any Members to the Units in issue in respect of that Plan.

### **4.6 Calculation of Entry or Exit Price**

- (a) The Trustee will not issue a Unit in the Fund other than at a price equal to the Entry Price.

- (b) The Trustee will not redeem a Unit in the Fund other than at a price equal to the Exit Price.

## **5. Appointment and Removal of Trustees**

### **5.1 The Trustee**

The Trustee must be a constitutional corporation as defined in SIS and must be appointed in accordance with Relevant Law.

### **5.2 Appointment to conform with law**

Any person or combination of persons may only be appointed to the board of the Trustee of the Fund so long as the person's or combination of persons':

- (a) appointment to and removal from office is effected in accordance with any relevant requirement of a Relevant Law relating to the composition, appointment and removal of trustees; and
- (b) holding of such office will not cause the Fund to breach or to fail to comply with any relevant requirement of a Relevant Law.

### **5.3 Compulsory Retirement**

The Trustee must retire as Trustee if:

- (a) the Trustee ceases to carry on business;
- (b) the Trustee is not, or is no longer, empowered to act as trustee; or
- (c) the Relevant Law requires it.

### **5.4 Voluntary Retirement**

- (a) Subject to the Relevant Law, the Trustee may retire from the Fund within 30 days of appointing a new Trustee.
- (b) The Trustee shall on retirement vest or cause to be vested such part of the Fund that is capable of being vested in a new Trustee.

### **5.5 Appointment of new Trustee**

- (a) A new Trustee appointed pursuant to clause 5.1 must:
  - (i) be a constitutional corporation as defined in SIS;
  - (ii) be appointed in accordance with any other requirements of the Relevant Law; and
  - (iii) execute a deed in a form as determined by the Trustee whereby the new Trustee shall undertake to all Members (jointly and severally) in the Fund and to the other Trustee to be bound by the responsibilities of the Trustee under this Trust Deed.
- (b) The new Trustee shall and may thereafter exercise all the powers and enjoy all the rights and be subject to all the responsibilities of the Trustee under this Trust Deed

as fully as if such new Trustee had been originally named as a party to this Trust Deed.

## **5.6 Release of the Retiring Trustee**

Subject to the terms of the Relevant Law, the retiring Trustee shall be absolved and released from all its responsibilities and duties under this Trust Deed relating to the Fund (but not including any antecedent neglect, default or breach of duty of the retiring party) to the extent permitted by law, as and from the date of such retirement.

## **6. Administration**

### **6.1 Management and Administration**

The general control, management and administration of the Fund shall be vested in the Trustee, who shall administer the Fund in accordance with this Deed.

### **6.2 Expenses**

- (a) The Trustee is, in addition to the remuneration payable to it under any other provision of this Deed or by law, entitled to be reimbursed out of the Fund or deduct from a Choice Member Account (whether coming out of income or corpus or both) for and in respect of:
- (i) all costs, charges and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with investments of the Fund, including commission, bank charges, valuation fees, legal fees, stamp duty but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred (by deduction or otherwise) by the Trustee;
  - (ii) the reasonable fees and expenses of the Auditor appointed in accordance with clause 9 in respect of the Fund;
  - (iii) all Taxes including any amount in bona fide reimbursement of any such Taxes properly charged to or payable by the Trustee (whether by any taxing authority or any other person) in connection with the Fund on any account whatsoever including (without limitation) any Goods and Services Tax payable by the Trustee in respect of the supply of trustee and other services to the Fund;
  - (iv) subject always to clause 31, all fees and expenses incurred in raising money for the Fund including without limitation interest on borrowings and discounts and any fees in respect of bill facilities in respect of the Fund;
  - (v) all costs, charges and expenses incurred in relation to the issue or redemption of any Units in the Fund;
  - (vi) the costs of convening and holding any meeting of Members of the Fund and carrying out any directions or resolutions of any such meetings;
  - (vii) stamp duty on cheques in respect of the Fund;
  - (viii) all fees payable to a stock exchange or the Regulator or other regulatory authority;
  - (ix) the fees and expenses of any solicitors, barristers, contractors, actuaries, investment advisers, valuers, accountants and other experts engaged;

- (x) all other out-of-pocket charges, expenses and outgoings reasonably and properly incurred by or on behalf of the Trustee;
- (xi) a fee being an amount of up to the rate of 2.5 per centum per annum of the Net Asset Value of the Fund on account of the costs, charges and expenses referred to in respect of all of the following paragraphs incurred by the Trustee and to the extent that such costs, charges and expenses exceed that amount the Trustee shall bear the excess and in the event that such costs, charges and expenses are less than the amount specified above, the Trustee is entitled to the amount specified above:
  - (A) all costs, charges and expenses of and incidental to the preparation, execution and stamping of this Deed;
  - (B) all costs, charges and expenses incurred in relation to the preparation, registration and distribution of the first disclosure material for potential Members or Employees or Employers issued by the Trustee in respect of the Fund and the preparation, registration (if requisite) and distribution of any periodical or other report or document required by law to be prepared in respect of the Fund;
  - (C) expenses in connection with the establishment and keeping of accounting records including expenses incurred in calculating the Value of the Fund;
  - (D) all other expenses connected with the establishment and administration of the Fund including data processing and bureau expenses and computer experts fees and expenses other than the usual overhead expenses of the Trustee;
  - (E) costs of postage in respect of all cheques, accounts, member statements, notices, reports and other documents posted to all or any Members or Employees or Employers in accordance with the provisions of this Deed; and
  - (F) costs of preparing and printing accounts, member statements and cheques in respect of the Fund,

PROVIDED THAT any such costs, charges, fees and expenses shall be reasonable in amount and reasonably and properly incurred.

- (b) The Trustee shall not be required to account for the costs, charges, fees and expenses in subclause 6.2(a)(xi).

### **6.3 Commission**

Subject to the provisions of SIS there shall be deducted by the Trustee from moneys received or lodged by any person who is legally entitled to receive commissions and on which the Trustee is charged commission, brokerage or other fees or charges, an amount equal to such commission, brokerage or other fees or charges PROVIDED THAT the amount of such commission, brokerage or other fees or charges shall not exceed, and shall be payable from, the Trustee's remuneration under clause 6.4 and shall not be a charge on nor paid out of the Fund. Subject to the foregoing the Trustee shall be entitled to pay commission, brokerage or other fees or charges calculated on or by reference to the Value of the Fund.

## 6.4 Remuneration

- (a) Subject to clause 24.4, the Trustee shall be entitled to receive remuneration out of the Fund or deduct remuneration from a Member Account and retain such remuneration for its own use and benefit or use such remuneration to pay costs of the Fund, as follows:
- (i) an Administration Fee of:
    - (A) up to 2.0% per annum of the Value of the Fund calculated monthly; plus
    - (B) up to \$100.00 per annum in respect of each Member Account,
 and, for the sake of clarity, the Administration Fee may:
    - (C) comprise remuneration retained for the Trustee's own use and benefit; and/or
    - (D) reflect costs which relate to the administration or operation of the Fund for which the Trustee is not remunerated by another category of fee described in this clause 6.4(a);
  - (ii) an Investment Fee of up to 2.0% and, for the sake of clarity, the Investment Fee may:
    - (A) comprise remuneration retained for the Trustee's own use and benefit; and/or
    - (B) reflect costs which relate to the investment of the assets of the Fund for which the Trustee is not remunerated by another category of fee described in this clause 6.4(a);
  - (iii) where the Trustee has entered into any insurance arrangement to provide some or all of the benefits payable from the Fund to or in respect of a Member, an Insurance Fee which relates directly to the costs incurred by the Trustee in connection with the insurance arrangement and for which the Trustee is not remunerated by another category of fee described in this clause 6.4(a);
  - (iv) where the Trustee carries out an activity on behalf of a Member at that Member's request, with that Member's consent, or relating to that Member and required by a Relevant Law, an Activity Fee which relates directly to the costs incurred by the Trustee in carrying out that activity and for which the Trustee is not remunerated by another category of fee described in this clause 6.4(a);
  - (v) where the Trustee provides, or arranges for the provision of, financial product advice to a Member, an Advice Fee which relates directly to the costs incurred by the Trustee in providing, or arranging for the provision of that advice and for which the Trustee is not remunerated by another category of fee described in this clause 6.4(a);
  - (vi) in the case of a redemption of Units under clause 19, an Exit Fee of an amount which relates directly to the costs incurred in connection with the redemption of such Units and for which the Trustee is not remunerated by

another category of fee described in this clause 6.4(a). The Exit Fee payable in respect of the redemption of any such Unit shall be payable to the Trustee out of the relevant proceeds upon the redemption of the Unit; and

- (vii) in the case of a conversion of Units under clause 22, a Switching Fee per Unit of an amount which relates directly to the costs incurred in connection with the redemption of such Units and for which the Trustee is not remunerated by another category of fee described in this clause 6.4(a), which will be deducted prior to converting these proceeds into Units of another Investment Option;
  - (viii) in the case of a conversion of Units under clause 22, a Buy Sell Spread per Unit of an amount which relates directly to the transaction costs incurred in connection with the redemption of such Units and for which the Trustee is not remunerated by another category of fee described in this clause 6.4(a), which will be deducted prior to converting these proceeds into Units of another Investment Option.
- (b) The remuneration payable pursuant to clause 6.4(a) above shall, to the extent it is retained out of the Fund for the Trustee's own use and benefit, be payable:
- (i) in the first instance out of the income of the Fund for the relevant Accrual Period but after all other costs charges and expenses due or accrued in respect of such period, with the residue of such sum (if any) being payable out of the corpus of the Fund; and
  - (ii) within five (5) Business Days after the end of each Accrual Period.

For the sake of clarity, this clause does not apply where the remuneration payable pursuant to clause 6.4(a) above is:

- (iii) deducted from a Member Account; or
  - (iv) used to pay costs of the Fund.
- (c) The remuneration of the Trustee payable pursuant to clause 6.4(b)(i) above shall accrue from day to day.

## 6.5 Agents

- (a) Subject to any relevant requirement of a Relevant Law, the Trustee shall be entitled to appoint as officers or servants of the Fund such persons as the Trustee shall from time to time require for the proper administration of the Fund and to pay the remuneration and other expenses properly attributable to their employment out of the Fund.
- (b) The Trustee may arrange for any company controlled by the Trustee or any person to act as agent of the Trustee for the purpose of receiving contributions payable to the Fund in accordance with this Deed or of paying benefits hereunder or for both purposes upon such terms and conditions (including a condition that the agent shall be required to account to the Trustee regularly at intervals not less frequently than yearly for all such receipts and disbursements) as the Trustee shall consider desirable.

## 6.6 Records and Statistics

- (a) The Trustee shall keep a complete record of all Members and all other matters, information and data necessary or expedient for the proper and efficient working of

the Fund and the carrying out of this Deed and for compliance with any relevant requirements of a Relevant Law.

- (b) The Trustee shall comply with any relevant requirement of a Relevant Law in relation to the keeping and retention of records.

## **6.7 Accounts and Reports**

- (a) The Trustee shall cause proper accounts to be kept showing all the dealings with the Assets of the Fund and shall cause accounts of the Fund made up to the end of each Year of Income to be prepared, and to be audited by the Auditor within such time and in such manner as may be specified in any Relevant Law.
- (b) The report of the Trustee shall contain such information (if any) as is required by any Relevant Law.

## **6.8 Confidential Information**

The Trustee both during and after its trusteeship shall regard as strictly confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this Deed.

## **6.9 Receipts**

A receipt of the Trustee given on its behalf for moneys payable to the Fund shall be a sufficient discharge to the person by whom those moneys were paid.

## **6.10 Information to Members**

- (a) The Trustee shall comply with any relevant requirements of a Relevant Law in relation to the provision of information and documents (including extracts of documents) to Members and other persons entitled to receive the same.
- (b) A copy of this Deed shall be kept at the principal office of the Trustee or such other places as the Trustee may from time to time determine. A Member may inspect a copy of this Deed during normal business hours upon reasonable notice.

## **6.11 Planner Fees**

The Trustee, at the written direction of a Member, is entitled to deduct Planner Fees from the Member's Member Account. The Planner Fees are comprised of the following:

- (a) Planner Servicing Fee which shall be determined at the close of business on the last day of each month and shall be up to 1% per annum of the Market Value of the relevant Member Account calculated in accordance with the Current Unit Value, charged monthly in arrears; and
- (b) Optional Fixed Fee which shall be up to \$10,000 per annum subject to indexation at the rate of increase in the Average Ordinary Time Earnings (persons) as published by the Australian Bureau of Statistics or such lesser rate as selected by the Trustee.

## **7. Trustee's Powers**

### **7.1 Committees**

Subject to clause 31 and the provisions relating to Policy Committees contained in clause 26, the Trustee may appoint one or more committees on which the Trustee may confer such

duties as the Trustee from time to time thinks fit. The Trustee may remove the members of any such committee from office at any time. Any committee so appointed shall at all times and in all things be and remain subject to and conform with the directions of the Trustee. The Trustee shall not be liable for any breach of duty or other wrongful act of any committee or of any member of any committee.

## **7.2 Contracts**

The Trustee may enter into and execute all contracts, deeds and documents and do all acts, matters and things which the Trustee may deem expedient for the purpose of securing the benefits to be provided under the Fund and for otherwise effectuating and carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed.

## **7.3 Power to effect policies**

- (a) Subject to Relevant Laws, the Trustee shall have power to effect or take out at the expense of the Fund from time to time one or more term or other policies with one or more Insurers to secure in whole or in part any of the benefits payable under the Fund and to continue or renew or arrange for the continuance or renewal of all or any of such policies for such period or periods as the Trustee may think fit.
- (b) The Trustee may agree from time to time with the Insurer concerned for any policy to be varied or modified.
- (c) The Trustee shall have power to effect or take out at the expense of the Fund from time to time a policy or policies of trustee indemnity insurance on such conditions as the Trustee may think fit.
- (d) The Trustee shall have the power to buy or sell insurance policies through any secondary market for those policies.

## **7.4 Bank accounts**

The Trustee may open and operate such bank and other accounts as it thinks desirable, and all cheques and other negotiable or transferable instruments and all receipts for money paid to the Fund shall be drawn, accepted, endorsed or otherwise executed in such manner as the Trustee from time to time determines.

## **7.5 Power to borrow**

The Trustee shall have power whenever it thinks fit in the interests of the Fund to raise or borrow sums of money and secure the repayment of any moneys so raised or borrowed in such manner and upon such terms and conditions as the Trustee thinks fit PROVIDED THAT the Trustee shall comply with the relevant requirements of any Relevant Law in relation to borrowings.

## **7.6 Power to Deduct Taxes**

- (a) The Trustee shall have power to deduct from any moneys paid into the Fund, any payment made from the Fund or any income or capital of the Fund, any amount in respect of Taxes which the Trustee believes is or may be payable in respect thereof in such manner as the Trustee thinks fit. The Trustee shall also have power to remit the amount deducted or such other amount as the Trustee thinks fit to the Commissioner of Taxation or other relevant authority as the case requires in accordance with the requirements of the applicable legislation.



- (b) Subject to any specific provision in the Deed, the Trustee shall have power to debit any account in the books of the Fund with any Taxes as the Trustee considers appropriate.
- (c) Without limiting the generality of clauses 7.7(a) and 7.7(b) the Trustee shall have power to deduct from any benefit payable under the Fund such amount as the Trustee considers is appropriate in respect of Taxes payable in respect of such benefit. Upon payment to the relevant government or other authority the Trustee shall be released and discharged in respect of the amount so deducted and paid.

## **7.7 Powers and Discretions**

- (a) The Trustee in the exercise of the authorities, powers and discretions conferred upon the Trustee by this Deed shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of authorities, powers and discretions from time to time and at any time may refrain from exercising all or any of the same from time to time or at all.
- (b) The Trustee may make rules and adopt procedures in relation to:
  - (i) the calculation, rounding-off and payment of contribution benefits and interest;
  - (ii) the determination of periods of time;
  - (iii) establish such accounts as are required for the purposes of the Fund; and
  - (iv) such other matters as it considers appropriate for the convenient administration of the Fund.

## **7.8 Delegation by Trustee**

- (a) The Trustee may, subject to the provisions of clause 31, delegate any trust, authority, power or discretion exercisable by the Trustee (including one which the Trustee may have a duty to exercise or perform and the power of delegation) to any person in such manner and upon such terms and conditions as the Trustee thinks fit.
- (b) The Trustee may, subject to the provisions of clause 31, vary or revoke any such delegation as the Trustee thinks fit and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.

## **7.9 Legal Proceedings**

The Trustee shall have power to institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund or this Deed generally and also to compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund.

## **7.10 Arbitration**

The Trustee shall have power but shall not be bound to refer any claims or demands by or against the Fund to arbitration and to observe and perform the awards of any arbitrator given in connection with such arbitration.

## **7.11 Trustee may act on advice**

The Trustee may act on the advice or opinion of any actuary, consultant, claim assessor, barrister, solicitor, broker, accountant, medical practitioner, insurer or other professional

person (whether or not such advice or opinion shall have been obtained by the Trustee) and shall not be responsible for any loss occasioned by so acting.

## **8. Trustee's Indemnity**

### **8.1 Indemnity**

The Trustee and each officer of the Trustee shall subject to any relevant requirement of a Relevant Law be indemnified to the extent of the Fund against all liabilities incurred by it in the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed.

### **8.2 Lien**

The Trustee shall have a lien on and may use any moneys for the time being in its hands for the indemnity specified in clause 8.1 and generally for the payment of all proper legal and other costs, charges and expenses of administering the Fund or otherwise performing the duties of the Trustee under this Deed.

### **8.3 Extent of Indemnity**

Without affecting the generality of this clause 8 the indemnity provided by this clause 8 shall apply to any payment made to any person whom the Trustee bona fide believed to be entitled to the same although such person was not entitled to the same or all of the same.

### **8.4 Insufficiency of Fund**

Under no circumstances whatsoever shall the Trustee, the officers of the Trustee or the members of any committee established by the Trustee or any of them be in any way liable or responsible in the event of the Fund proving insufficient for any reason to provide the benefits specified in this Deed or any part of such benefits.

### **8.5 Liability of Delegates**

No Trustee, or person (other than a person acting for a fee) to whom the Trustee may have delegated authority shall be personally liable with respect to the Fund or in respect of the investment, non-investment or loss on investment in the Fund, except in the case of a breach of trust knowingly and intentionally committed by such Trustee or person.

### **8.6 Overriding Provision**

This clause 8 is subject to clause 31. Accordingly, notwithstanding anything expressed or implied to the contrary in the foregoing provisions of this clause 8 no lien shall be exercised pursuant to this clause 8 to the extent that in the opinion of the Trustee to do so would or might cause the Fund to breach or to fail to comply with or satisfy any relevant requirement of a Relevant Law relating to liens over benefits.

## **9. Auditor**

### **9.1 Appointment**

Subject to clause 31, the Trustee shall appoint an Auditor to the Fund on such terms and for such period as the Trustee thinks fit and the Trustee may remove any Auditor and appoint another person in that person's stead.

## **9.2 Remuneration**

The Trustee shall be entitled to pay the Auditor's remuneration and other proper expenses out of the Fund.

## **9.3 Access to Records**

The Trustee and each Member shall supply the Auditor with all such accounts and information as the Auditor may from time to time require.

## **9.4 Reports**

The Trustee shall, having regard to any relevant requirement of a Relevant Law, require the Auditor to:

- (a) audit the financial statements of the Fund annually in accordance with clause 6.7(a) or at such other intervals as the Trustee may require; and
- (b) prepare such reports as the Trustee may require and deliver them to the Trustee.

# **10. Investments**

## **10.1 Investment of Fund Money**

Subject to clause 31, so much of the moneys of the Fund as are not directly required for any other purpose shall as soon as practicable be invested in or upon such investments or property of whatsoever nature and wheresoever situate and whether involving liability or not and whether producing income or not or upon such personal credit with or without security as the Trustee shall in its absolute discretion think fit as if the Trustee were the beneficial owner thereof with power from time to time to sell or get in any such investments or property and to vary or transpose them for other investments or property of the kind hereby authorised.

## **10.2 Pooled Investments Permitted**

Subject to clause 31, the Trustee may invest moneys of the Fund in a common pool.

## **10.3 Investments in other products of the Trustee**

Subject to clause 31, the Trustee may invest moneys of the Fund in entities other than the Fund for which the Trustee may be entitled to remuneration.

## **10.4 Underwriting Powers**

The Trustee may underwrite or sub-underwrite or join with others in underwriting or sub-underwriting the subscription of any of the investments hereunder and may in exercise of the Trustee's powers of delegation under this clause 10 give to any investment manager appointed under clause 10 general authority to enter into and carry out underwriting or sub-underwriting agreements and the like whether for the Fund alone or for the Fund in conjunction with other funds and institutions.

## **10.5 Custodian Trustees and Investment Managers**

- (a) The Trustee subject to any relevant requirement of a Relevant Law shall have power to appoint from time to time such one or more persons, firms or companies as the Trustee thinks fit to act either as Custodian or investment manager or both subject to such conditions as the Trustee may from time to time determine and may, subject to

any relevant requirement of a Relevant Law, delegate to and confer upon each such custodian, trustee or investment manager such authorities, powers and discretions as the Trustee thinks fit.

- (b) The Trustee subject to any relevant requirement of a Relevant Law shall not be liable or responsible for any act, omission, error of judgment, negligence or breach of trust of any Custodian or investment manager appointed pursuant to clause 10.5(a) and shall not be bound to take proceedings against any Custodian or investment manager in respect thereof.
- (c) The Trustee shall have power to pay out of the Fund to any Custodian appointed pursuant to clause 10.5(a) such remuneration for his, her, its or their services as the Trustee considers proper.
- (d) The Trustee shall, subject to any relevant requirement of a Relevant Law also have power to remove from time to time any custodian trustee or investment manager appointed pursuant to clause 10.5(a).
- (e) No such Custodian or investment manager appointed pursuant to clause 10.5(a) shall be entitled to take any part in the proceedings or deliberations of the Trustee.

## **10.6 Additional Powers relating to Investments**

The powers of investment, selling, getting in, variation and transposition referred to in clauses 10.1, 10.2 and 10.3 shall be exercised and carried out either by the Trustee or by one or more Custodians or investment managers appointed pursuant to clause 10.5 or partly by one and partly by the other or others as the Trustee may from time to time determine.

## **10.7 Member Investment Choice**

Subject to clause 24.2, 24.6 and 31, the Trustee may permit Members to exercise a choice between investment strategies on terms and conditions approved by the Trustee.

## **11. Admission**

### **11.1 Application**

This clause 11 applies subject to clause 33.

### **11.2 Applications for Membership**

The Trustee may admit a person to Membership:

- (a) if the person is eligible for Membership under SIS and the person applied for Membership pursuant to an Eligible Application; or
- (b) if the person is an Eligible Employee, a Standard Employer-Sponsor applied for Membership on behalf of that Eligible Employee in a manner and form required by SIS; or
- (c) in any other circumstances permitted by SIS.

### **11.3 Application to Join as Standard Employer-Sponsor**

- (a) A person may join the Fund as a Standard Employer-Sponsor pursuant to an Eligible Application made by such person to the Trustee or in any other circumstances permitted by SIS.
- (b) An employer will become a Standard Employer-Sponsor of the Fund upon executing such agreements or acknowledgments as the Trustee may require and in such form as determined by the Trustee:
  - (i) on the date specified by the Trustee; or
  - (ii) on the date agreed between the Employer Sponsor and the Trustee; or
  - (iii) if no date is specified or agreed, on the date the Trustee accepts the Eligible Application from the Employer.
- (c) The Trustee may refuse to accept an Eligible Application described in clause 11.2(a) and will not be bound to provide any reasons for such refusal.

### **11.4 Commencement of Membership**

- (a) A person or an Eligible Employee will be admitted to Membership on the date specified by the Trustee and if no date is specified then on the date the Trustee accepts any application for Membership described in clause 11.1.
- (b) As soon as a person or an Eligible Employee is admitted to Membership, they shall from the date of admission to Membership be bound by the terms, trusts and conditions of this Deed.

### **11.5 Trustee can refuse to accept Applications**

The Trustee can refuse to accept any application for Membership pursuant to clause 11.1 and shall not be bound to provide any reason for refusing any such application.

### **11.6 Register**

- (a) Whenever the Trustee admits a person to Membership in accordance with clause 11.4, the Trustee will cause the person to be allotted Units in the Fund and entered on the Register as a Member.
- (b) The Trustee will keep or cause to be kept up-to-date the Register in respect of the Trust at its registered office and there will be entered:
  - (i) the names and addresses of Members;
  - (ii) the number of Units and the type of Units held by each Member in their Member Account;
  - (iii) the date on which the name of every person was entered in the Register as a Member and the date at which any person ceased to be a Member; and
  - (iv) such other information as determined from time to time by the Trustee;
- (c) Any change of name or address on the part of any Member will be notified to the Trustee who will alter the Register accordingly.

- (d) The Trustee will not be obliged to enter on the Register notice of any express, implied or constructive trust in respect of any Unit.

## 11.7 Cessation of Membership

A Member shall cease to be a Member of the Fund:

- (a) upon the payment of the whole of the benefit in the Member's Account to or in respect of the Member;
- (b) upon the transfer of the whole of the Member's benefit to another Approved Arrangement in accordance with clause 23;
- (c) upon the payment of part of the Member's benefit to or in respect of a Member and the transfer of the balance of the Member's benefit to another Approved Arrangement in accordance with clause 23;
- (d) if the Member ceases to be entitled to a benefit; or
- (e) if all the Members' Accounts have nil balances and the Trustee has determined that the Member has ceased to be a Member.

## 11.8 Cooling Off

Subject to the requirements of Part 19 of SIS, a person accepted by the Trustee as a Member may by written notice given to the Trustee within 14 days after the Trustee has issued that person an interest in the Fund request the trustee to redeem that interest. That redemption request will be processed according to the requirements of SIS. Upon receipt the Trustee shall redeem the interest, but may adjust that redemption for any increase or decrease in the value of the investments and any liability of the Trustee for Taxes. Where the initial contribution includes any amount subject to Preservation, that amount can only be paid to an Approved Arrangement authorised to receive that money under Relevant Law.

## 12. Information to Trustee

### 12.1 Medical Examinations

- (a) Subject to clause 31, the Trustee may require any Eligible Employee or person who applies for Membership of the Fund to undertake such medical examinations including blood tests from medical practitioners nominated by the Trustee (whether at the request of an Insurer or otherwise) and provide such statements of medical history and other information and documents (whether relating to the medical history of the applicant or to any other matter or thing) in such form as the Trustee may from time to time specify or require for the purposes of the Fund.
- (b) Subject to clause 31, if any Eligible Employee or Member to whom clause 12.1(a) applies fails to undertake or fails to pass satisfactorily such medical examinations (including any blood test) or fails to provide a satisfactory statement or other information document as aforesaid the Trustee may at its discretion:
  - (i) in the case of an Eligible Employee, refuse that person Membership of the Fund or admit that person to Membership on such special conditions relating to contributions, restricted benefits or otherwise as the Trustee may determine and notify the Eligible Employee and his or her Employer; and
  - (ii) in the case of a Member, impose such special terms and conditions in respect of Membership of and benefits under the Fund as it considers appropriate.

- (c) The Trustee may enter into an agreement with the Employer or Member to adjust or remove any restriction on benefits on the basis that the Employer meets any additional cost to the Fund as determined by the Trustee which results from any such variation or removal.

## **12.2 Misleading Statements**

Subject to clause 31, where the Trustee is of the opinion that a Member to whom clause 12.1(a) applies has made a false, misleading or inappropriate statement as to the Member's age, state of health or any other matter or thing or has failed to disclose any relevant fact or information in relation to his or her application for Membership or in any medical examination or test for the purposes of the Fund, the Trustee may reduce or adjust any benefit payable to or in respect of the said Member in such manner as the Trustee may determine.

## **12.3 Information to Trustee and Confidentiality**

- (a) Each Employer shall supply to the Trustee such details concerning the Members employed by it as the Trustee shall from time to time require for the purposes of the Fund.
- (b) If called upon by the Trustee, the Employer shall issue to the Trustee a certificate in respect of such details and the Trustee shall be entitled to rely on that certificate as conclusive evidence of the facts set out therein for all the purposes of this Deed and the calculation of benefits.
- (c) The Trustee, the Employer and each officer, servant and delegate of the Trustee shall treat as confidential all information regarding Members and Beneficiaries which becomes known thereto in connection with the administration of the Fund except to the extent reasonably necessary for the operation and administration of the Fund and the proper application of this Deed.
- (d) No information or details regarding the medical history of an applicant for Membership or a Member shall be provided to his or her Employer without the written consent of the person concerned.

## **13. Accounts and Valuation**

### **13.1 Member Accounts**

The Trustee shall keep or cause to be kept a Member Account with respect to each Member, which records the following amounts:

- (a) all contributions to the Fund by an Employer in respect of that Member that the Trustee considers should be credited to the particular Member's Account;
- (b) contributions to the Fund by the Member or other Contributor that the Trustee considers should be credited to the particular Member's Account;
- (c) amounts transferred to the Fund in respect of that Member from any other superannuation fund or Approved Arrangement pursuant to this Deed and which the Trustee considers should be credited to the particular Member's Account;
- (d) amounts debited to such Member's Account which are transferred to another superannuation fund or Approved Arrangement pursuant to this Deed;

- (e) the proceeds of any insurance policy or any annuity on the life of that Member which are paid to the Fund and which the Trustee considers should be credited to that particular Member's Account;
- (f) benefits paid hereunder to or in respect of that Member and which are debited to that particular Member's Account;
- (g) amounts debited to the Member's Account to pay premiums on policies of insurance or the consideration for any annuity on the life of that Member;
- (h) forfeited benefits credited or debited to the Member's Account;
- (i) taxation payable by the Fund which is debited to the Member's Account;
- (j) the number of Units allocated to that Member's Account, the number of Units in the Plan and any Investment Option in which those Units have been issued and the value of those Units;
- (k) any income or distributions that are attributable to a Member's Account or other amounts as the Trustee determines; and
- (l) any taxation, costs, disbursements, commissions, foreign-imposed withholding or other taxes, fees, management charges (including the Trustee's remuneration) and other proper outgoings and losses that are attributable to a Member's Account or other amounts as the Trustee determines subject to Relevant Laws.

## **13.2 Other Accounts**

The Trustee may establish such other accounts as are required for the purposes of the Fund.

## **14. General Provisions Governing Benefits**

### **14.1 Overriding Provision Relating to Benefits**

This clause 14.1 is intended to amplify clause 31. Accordingly, notwithstanding anything expressed or implied to the contrary in this Deed (other than clause 31):

- (a) no benefit:
  - (i) shall be paid from the Fund or otherwise dealt with; or
  - (ii) shall be retained in the Fund,

if in the opinion of the Trustee so to do would or might prejudice the granting or continuance of taxation concessions for or in respect of the Fund under the Tax Act or cause the Fund to be in breach of or to fail to comply with or satisfy any relevant requirement of a Relevant Law and the Trustee shall have power to impose conditions in respect of any payment from the Fund so as to ensure compliance with such requirements;
- (b) no benefit:
  - (i) shall fall below the minimum benefit which in the opinion of the Trustee is required to be paid or provided from the Fund; or



- (ii) secured or payable from the Fund to or in respect of a Member or a Beneficiary hereunder shall exceed the maximum benefit which in the opinion of the Trustee can be paid or provided from the Fund,

in order to ensure that the granting and continuance of taxation concessions for or in respect of the Fund under the Tax Act are not prejudiced or that the Fund is not in breach of or fails to comply with or satisfy any relevant requirement of a Relevant Law;

- (c) no contributions shall be received into the Fund if in the opinion of the Trustee so to do would or might prejudice the granting or continuance of taxation concessions for or in respect of the Fund under the Tax Act or cause the Fund to be in breach of or to fail to comply with or satisfy any relevant requirement of a Relevant Law; and
- (d) if, in the opinion of the Trustee, benefits must commence to be paid, or be paid, to or in respect of any Member in order to comply with any relevant requirement of a Relevant Law relating to the age for payment of benefits then the Trustee shall at that time pay or cause to be paid to or in respect of the Member a benefit of an amount determined in accordance with such of the provisions of this Deed as the Trustee in its absolute discretion considers the case requires.

In order to ensure compliance with this clause 14.1, the Trustee may temporarily or permanently waive or reduce the contributions (if any) payable to the Fund by or in respect of a Member and, in any case subject always to this clause 14.1, the Trustee may adjust the benefits provided or to be provided for or in respect of a Member or a Beneficiary and the circumstances in which the same will be provided in such manner and to such extent as may be determined by the Trustee.

## **14.2 Rights to benefits**

Subject to clause 31, no Member or person claiming through or under a Member or on his or her behalf or a Dependant or legal personal representative shall be entitled to require payment of any amount from the Fund except as may be expressly provided for and specified in this Deed and no Member or other person whose claims hereunder shall have been satisfied shall retain or have any further or other interest in the Fund.

## **14.3 Claims for benefits**

- (a) Subject to clause 31, before making payment of any benefit out of the Fund the Trustee shall be entitled to have produced to it such certificates of birth, death and marriage and other documents, evidence or information as the Trustee may require in order to satisfy itself that the benefits hereunder are properly in accordance with this Deed and no benefit shall be payable until the Trustee is so satisfied.
- (b) Subject to this Deed, the Trustee shall only recognise and deal with the Member or Beneficiary and shall not recognise and deal with any other person claiming a right or interest in or in respect of the Member's or Beneficiary's benefits. Notwithstanding the foregoing, the Trustee may, but is not obliged to, pay any payment due to a Member or Beneficiary under this Deed in accordance with the written instructions of that person (or of his or her attorney appointed under power of attorney).

## **14.4 Insured benefits**

Where the Trustee has entered into any insurance arrangement to provide some or all of the benefits payable from the Fund to or in respect of a Member and the Insurer either declines cover or reduces the amount payable to or in respect of that Member, then notwithstanding anything expressed or implied to the contrary in this Deed other than clause

31, the Trustee shall reduce the amount of the benefit otherwise payable to or in respect of the Member by the amount which the Insurer declines or refuses unless the Employer enters into an arrangement acceptable to the Trustee to reimburse the Fund in respect of the amount of insurance so declined or refused.

#### **14.5 Adjustment to Insured Benefits**

Notwithstanding anything to the contrary in this Deed, any entitlement to a death or disablement benefit shall be subject to the terms and conditions of the policy under which the Member is insured and if consequent upon the death and disablement of a Member the amount of insurance is not paid or is paid as a reduced amount, then the benefit payable under the Fund shall unless the Trustee otherwise determines be reduced by the amount of the insurance not paid under the policy.

#### **14.6 Benefits Strictly Personal**

- (a) Subject to clause 18.13, all rights and benefits of Members and Beneficiaries under this Deed are strictly personal and no Member or Beneficiary shall assign or charge his or her rights or benefits under the Fund or any part thereof either absolutely or conditionally.
- (b) Except as otherwise expressly provided in this Deed but subject to clause 31, if any Member or Beneficiary:
  - (i) attempts to assign or charge his or her right or benefit under the Fund or any part thereof; or
  - (ii) does, suffers or incurs anything by which that person's right or benefit under the Fund or any part thereof through any act or default or by operation or process of law would or might become vested in or payable to any other person or if any other event happens by which he or she might be wholly or partly deprived of the full and free personal enjoyment of that person's right or benefit under the Fund or any part thereof,

then and in any such event that person's right or benefit shall, subject to clause 31, thereupon determine and neither the Member nor the Beneficiary (as the case may be) nor any person claiming under or in respect thereof shall have any further claim or right in respect of that interest or benefit.

#### **14.7 Circumstances Triggering Release of Benefits**

- (a) Reaching Normal Retirement Date

A Member shall be entitled to be paid a benefit in the amount of their Member Account upon the first (if any) of the following events to happen:

- (i) in the case of a Member who is employed by an Employer, retirement from the employment of the Employer on or after reaching their Normal Retirement Date;
- (ii) in the case of a Member who is not employed by an Employer, the Member applying to the Trustee for payment of the Member's benefit and upon the Trustee being satisfied that the Member has retired from the workforce and has attained age 55 or such other age specified in SIS;
- (iii) the Member attaining age 65 if, at that time, the Member is not gainfully employed for at least 10 hours per week (or such other number of minimum hours as prescribed in SIS) or ceasing to be gainfully employed for at least 10

hours per week (or such other number of minimum hours as prescribed in SIS) after having attained age 65;

- (iv) the Member applying to the Trustee for payment of the benefit after having reaching their Normal Retirement Date (whether or not the Member is gainfully employed);
- (v) the Member attaining age 70 if, at that time, the Member is not gainfully employed for at least 30 hours per week (or such other number of minimum hours as prescribed in SIS) or ceasing to be gainfully employed for at least 30 hours per week (or such other number of minimum hours as prescribed in SIS) after having attained age 70; or
- (vi) as otherwise permitted under SIS.

(b) Death

In the event of the death of a Member, the amount of their Member Account shall become payable by the Trustee in accordance with clause 16.

(c) Total and Permanent Disablement

In the event of a Member suffering Total and Permanent Disablement, the amount of their Member Account shall be paid to the Member, or if they are unable to manage their own affairs, in the discretion of the Trustee either to such of the Member's Dependants in such proportions as the Trustee determines and/or to a person who executes a trust deed which provides, to the satisfaction of the Trustee, that person will hold the benefit on trust for the disabled Member.

(d) Member Going Overseas

The amount of their Member Account, including any Preserved Benefits, shall be paid to the Member if the Trustee is satisfied that the Member is leaving Australia to reside permanently overseas.

(e) Financial Hardship and Other Circumstances

Subject to Relevant Laws, In the case of:

- (i) financial hardship established to the satisfaction of the Trustee; or
- (ii) any circumstances considered exceptional by the Trustee,

the Trustee shall, subject to clause 31, have power to pay to or in respect of a Member the whole or any part of the amount determined by the Trustee to represent the Member's interest in the Fund at the time of making the determination.

(f) Reduction of Benefit

Where the Trustee pays an amount to or in respect of a Member pursuant to this clause 14.7, the Trustee shall subject to clause 31, reduce any benefit which is or subsequently becomes payable to or in respect of the Member under clause 14.7.

## 14.8 Proofs

Whenever it shall be necessary for the Trustee to decide questions of fact the Trustee may act upon such proofs or presumptions as the Trustee may deem satisfactory whether the same be strictly legal proofs or legal presumptions or not.

## 14.9 Currency

All benefits payable under this Deed shall be payable in Australian currency but if any Beneficiary shall be resident outside Australia the Trustee may, subject to any exchange control regulations, transmit to the Beneficiary in his or her country of residence the amount of the currency of that country which may be purchased by the amount of his or her benefit and the Trustee shall be entitled to deduct the cost of any such transmission.

## 14.10 Benefits Paid in Advance

If the Member at the time of ceasing for any reason to be in the Service shall have received a payment from the Fund in advance of a benefit or in lieu of a benefit that may subsequently become payable and the amount of such payment shall unless the Trustee determines otherwise be deducted from the amount of that benefit if it shall become payable from the Fund.

## 15. Specific Requirements Governing Benefits

### 15.1 Requirement for Preservation

- (a) All benefits of a Member in the Fund other than those Unrestricted Benefits arising from amounts rolled over or transferred or otherwise paid to the Fund shall, subject to the terms of this clause 15.1(c), be subject to Preservation in the Fund. Subject to clause 15.1(c), any benefits in the Fund which would but for clause 15.1(a) comprise Restricted Non-Preserved benefits, shall comprise Preserved Benefits for the purpose of SIS.
- (b) Benefits subject to Preservation in the Fund shall cease to be subject to Preservation and become Unrestricted Benefits in the circumstances prescribed in SIS as causing Preserved Benefits to become "unrestricted non-preserved benefits" within the meaning of SIS.
- (c) In the event that a Member exercises any right conferred under any Relevant Law to redeem his or her interest in the Fund within a cooling-off period provided for under such Relevant Law, the Trustee may, at its discretion and subject to the exercise of that discretion not resulting in any breach of SIS, allow any amounts which were Restricted Non-Preserved benefits prior to being rolled over or transferred or otherwise paid to the Fund to have the same status on payment from the fund as they would have if they had remained in the Approved Arrangement from which they were rolled over, transferred or otherwise paid into the Fund.

### 15.2 Voluntary Payment of Unrestricted Benefits

- (a) The Trustee may from time to time prescribe requirements concerning the voluntary payment of Unrestricted Benefits including, but not limited to:
  - (i) the minimum amounts permitted to be drawn;
  - (ii) the maximum number of separate lump sums and pensions;
  - (iii) such other requirements as the Trustee shall determine.
- (b) Subject to any such requirements as described in clause 15.2(a), and conditions applying to the relevant Plan and to the requirements of SIS (including where relevant any standards applicable to pensions) the Trustee shall on request by the relevant Member made in such form as shall be prescribed by the Trustee from time to time pay a Member's Unrestricted Benefits in circumstances where paragraphs

(iv) or (v) do not apply, at the election of the Member in any one or more of the following ways:

- (i) paying by way of lump sum;
- (ii) applying the benefits to the purchase of an annuity, including a Complying Annuity, on behalf of the Member;
- (iii) paying the benefits on behalf of the Member to an Approved Arrangement;
- (iv) paying the benefits in the form of a pension (and including any permitted commutation of such pension);
- (v) paying the benefits in any other manner as determined from time to time by the Trustee and as permitted by SIS;
- (vi) pay the benefits in any combination of the above methods.

### **15.3 Compulsory Payment of benefits (other than on death)**

- (a) If a person becomes a Member after having attained his or her Normal Retirement Date, then that Member's benefits shall be or become payable as and when they become Unrestricted Benefits.
- (b) Benefits payable under this paragraph (b) shall be payable at the election of the Member but subject to SIS, in one or more of the methods described in clause 15.2 but if no election is made in terms permitted by SIS, shall be paid by way of lump sum.
- (c) Notwithstanding anything in this clause 15.3, Member's benefits shall not become payable at any time later than the time required for payment under SIS.

## **16. Benefits on Death**

### **16.1 Payment of Benefits on Death of a Member**

- (a) Subject to the provisions of this Deed, including the provisions of clause 31, any benefit which may be payable from the Fund on the death of a Member shall be paid or applied by the Trustee to or for the benefit of such one or more of:
  - (i) the Dependants of the Member;
  - (ii) the legal personal representative of the Member; and
  - (iii) if a surviving Dependant of the Member subsequently dies, the Dependants and the legal personal representatives of the deceased Dependant; and

to the exclusion of the other or others of them and in such manner and proportions, and subject to such conditions, as the Trustee shall determine PROVIDED THAT in the event that the Member has provided the Trustee with a valid Binding Death Nomination that has not been subsequently revoked by notice in writing from the Member to the Trustee, the Trustee shall be bound to pay any benefit payable pursuant to the Binding Death Benefit Nomination in accordance with clause 16.3.

- (b) If no valid Binding Death Benefit Nomination has been provided to the Trustee by the Member, and Trustee is unable to pay a benefit under clause 16.1(a)(i) to 16.1(a)(iii), the Trustee may pay the benefit as otherwise permitted under SIS.

- (c) Where a Member does not elect to make a Binding Death Benefit Nomination the Trustee shall retain the discretionary power granted by clause 16.2(c).

## 16.2 Nominated Dependants

- (a) A Member may by notice in writing to the Trustee in the form from time to time prescribed by the Trustee nominate any one or more Dependants as his or her Nominated Dependant to receive the benefit, or a specified proportion of the benefit, payable upon the Member's death.
- (b) A nomination made pursuant to clause 16.2(a) may at any time be:
  - (i) revoked by the Member; or
  - (ii) revoked by the Member and substituted with a new nomination.
- (c) In making a determination under clause 16.2(a) the Trustee may have regard to, but shall not be bound by, the relevant deceased Member's current nomination (if any) of a Nominated Dependant and the matter shall be at the absolute discretion of the Trustee.

## 16.3 Binding Death Benefit Nominations

- (a) A Member may, by notice in writing to the Trustee in the form prescribed by SIS (a **Notice**), make a Binding Death Benefit Nomination directing the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to the legal personal representative or a Dependant of the Member in accordance with that Notice.
- (b) If:
  - (i) a person nominated in the Notice is not, at the time of death, the legal personal representative or a Dependant of the Member;
  - (ii) the identity of the person nominated in the Notice is not certain or readily ascertainable from the Notice;
  - (iii) the proportion of the benefit that will be paid to a person nominated in the Notice is not certain or readily ascertainable from the Notice;
  - (iv) the Notice has expired under SIS; or
  - (v) the Notice is otherwise not made in accordance with SIS;
 then the Notice is invalid and the Binding Death Benefit Nomination is not binding on the Trustee.
- (c) If the Notice is invalid pursuant to clause 16.3(b) the Trustee must exercise its discretionary power granted by clause 16.2(c).

## 16.4 Ascertaining Dependants

- (a) In ascertaining the Dependants (including the Nominated Dependants) of a deceased Member or a Beneficiary the Trustee shall not be under any legal obligation to locate, establish or identify all the persons who might possibly qualify and the Trustee may act upon such information as it thinks fit to locate, establish and identify persons as the Dependants (including the Nominated Dependants) of the Member or Beneficiary.

- (b) If after reasonable enquiry the Trustee determines that there are no Dependants of the Member whose existence or whereabouts are known to the Trustee, the sum payable out of the Fund in respect of the Member shall be paid by the Trustee to the Member's legal personal representative.
- (c) If after reasonable enquiry the Trustee determines that there are no Dependants of the Member whose existence or whereabouts are known to the Trustee and no legal personal representative shall be appointed, the sum payable out of the Fund in respect of the Member may be paid by the Trustee as otherwise permitted under SIS.

## 16.5 Application of Unpaid benefits

Without prejudice to the foregoing provisions of this clause 16, if a Beneficiary dies before the whole of a benefit which is payable to that Beneficiary has been paid, the amount of the unpaid benefit shall be paid or applied in accordance with clauses 16.1 and 16.3 as if the Beneficiary were a Member at the time of his or her death.

## 16.6 Beneficiary under Legal Disability

- (a) If it appears to the Trustee that a Beneficiary is:
  - (i) a minor or is otherwise under any legal disability or incapacity of any nature;
  - (ii) suffering from any physical or mental sickness, injury, deterioration or disorder; or
  - (iii) unable by reason of character, habits or mode of life or otherwise howsoever to properly deal with any amount payable from the Fund,

the Trustee may pay or apply the whole or such part of that amount if such one or more of the following ways as the Trustee thinks fit:

  - (i) to any Dependant of the Beneficiary;
  - (ii) for or towards the maintenance, education, advancement or benefit of the Beneficiary or of any Dependant of the Beneficiary in such form and manner and subject to such terms and conditions as the Trustee may think fit; or
  - (iii) without limiting the generality of clause 16.6(a)(ii), to a person who appears to the Trustee to be a trustee for the Beneficiary (including a trustee appointed under a separate trust established by the Trustee subject to such trusts and with such powers as the Trustee thinks fit) or a representative, Spouse, Child, parent or guardian of, or to have for the time being the care or custody of the Beneficiary or any Dependant of the Beneficiary, or to be responsible for or have the financial expense of the care or custody of the Beneficiary or of any Dependant of the Beneficiary.
- (b) The receipt of any person to whom the Trustee is authorised to make payment as provided in clause 16.6(a) shall be a full and sufficient discharge to the Trustee and the Trustee shall not be bound or concerned to see to the application of such payment and may exercise any of the powers specified in clause 16.6(a) whether or not there is any other money or funds available for any of the aforesaid purposes and whether or not there is any person bound by law or otherwise to provide for such maintenance, education, advancement or benefit.

- (c) The Trustee is not bound to have recourse to this clause 16, or to consider whether recourse should be had hereto, notwithstanding that the Trustee may have actual notice of any infirmity, lack of fitness or other relevant matter provided for herein.

## **16.7 Discharge of Trustee**

The receipt of a Beneficiary, legal personal representative or any person acting on behalf of a Beneficiary shall be a complete discharge to the Trustee in respect of the amount paid to that person and the Trustee shall not be bound to see to the application thereof.

## **17. Pension Benefits**

### **17.1 Pension Benefits**

Despite anything expressed or implied to the contrary in this Deed, but subject to clause 24.7, the Trustee may, upon receipt of a written notice from a Member or a Beneficiary stating that the Member or Beneficiary elects to receive all or any portion of the money in a Member's Account by way of pension, arrange for the provision of a pension on terms and conditions as are permitted by SIS and Relevant Laws.

### **17.2 Establishment Conditions**

The Trustee may set terms and conditions on the circumstances under which it is prepared to offer pensions.

### **17.3 Pension Accounts**

Where a Member is to receive any benefit pursuant to this Deed by way of pension, the Trustee shall establish a Pension Account in respect of the Member and the pension shall be paid from the amount standing to the credit of the Pension Account for the Member.

### **17.4 Transfers to the Pension Account of a Member**

The Trustee shall transfer to the Pension Account of a Member such amount of money from the Member's Account as the Trustee shall from time to time deem necessary.

### **17.5 Frequency of Payment**

A Member can select to have the pension paid monthly, quarterly, half yearly or annually and the Trustee must pay the pension to a Member at any of these times as selected by the Member. The pension can be paid at other times with the agreement of the Trustee.

### **17.6 Changing Frequency of Payment**

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

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

If at any time a Member has not made a selection as to the frequency of the pension payments, the Trustee must pay the pension at least annually.

### **17.7 Minimum Annual Payment**

For so long as the pension is payable, the Trustee must ensure that pension payments are made within the timeframe permitted under SIS.



## **17.8 Selecting Pension Level**

For each financial year (or part of a financial year), the pension payments to a Member must be:

- (a) in the case of an Allocated Pension, lower than the maximum limits or higher than the minimum limits specified in SIS for the payment of an Allocated Pension provided by the Fund; and
- (b) in the case of a Market Linked Pension, calculated in accordance with the method prescribed in SIS; and
- (c) in the case of any other pension, as permitted by SIS.

## **17.9 Notification of minimum/maximum payments**

The Trustee will notify the Member of the minimum and maximum limits for pension payments in respect of any pension as required by the Relevant Law.

## **17.10 Selection of Pensions Payments**

For an Allocated Pension, at any time during the financial year a Member may select the level of pension payments for that financial year within the limits in clause 17.8. The selection must be in a manner approved by the Trustee.

## **17.11 Amount of Payments where amount not selected**

For an Allocated Pension, if the Member has not made a selection under clause 17.10, the Trustee must pay a pension at the minimum level required under clause 17.8.

## **17.12 Commutation**

A Member may commute the whole or a part of the Member's pension where the Member notifies the Trustee in a manner approved by the Trustee and the commutation is permitted under SIS.

## **17.13 Trustee may set limits on the amount of pension commuted**

Subject to SIS, the Trustee may set minimum limits on the amount of the Member's pension that can be commuted and any commutation must comply with any limits set by the Trustee.

## **17.14 Amount of Lump Sum payments on Full Commutation**

On a Member fully commuting the Member's pension the Trustee must pay a lump sum benefit to the Member equal to the amount of all money in the Member Accounts of the Member.

## **17.15 Amount of Lump Sum payments on Partial Commutation**

On a Member partially commuting the Member's pension, the Trustee must, subject to clause 17.13, pay a lump sum benefit to the Member equal to the amount requested to be withdrawn by the Member.

## **17.16 Termination of Pension**

The pension payments to a Member will terminate when all the money in the Pension Account have been withdrawn.

### **17.17 Pension Payments on the Death of a Member**

The pension shall not be transferred to any person other than a Dependant on the death of the Member and shall be transferred only upon such other terms as are permitted by SIS.

### **17.18 Powers of Beneficiary**

A Beneficiary possesses all the rights and entitlements to deal with a pension under this clause 17 as if the Beneficiary is a Member of the Fund.

### **17.19 Pension Payments cannot be used as Security**

The capital value of the Pension Account and any income from it shall not be used by any person as security for a borrowing.

## **18. Provisions Regarding Contributions**

### **18.1 Limit of Contributions**

Contributions shall be made in accordance with the terms of this Deed and any Eligible Application or other arrangements agreed to by the Trustee but, subject to clause 24.5, the Trustee may refuse to accept Contributions (and if already accepted may return the same) where:

- (a) the Contributions are less than the minimum set by the Trustee;
- (b) limitations on Contributions exist by virtue of the Relevant Law;
- (c) the acceptance of Contributions would jeopardise the status of the Fund as a complying superannuation fund or would otherwise be inconsistent with the Relevant Law; or
- (d) participation of the Member in the Fund has ceased in accordance with clause 11.7.

### **18.2 Commencement and Termination of Contributions by Members and Contributors**

A Member or Contributor may commence to make Contributions on the person becoming a Member of the Fund and shall cease to make Contributions upon being required to do so by SIS or the Trustee.

### **18.3 Employer Contributions**

Each Employer shall make Contributions in respect of a Member of such amount, in such manner and at such times as specified in its Eligible Application or in any subsequent notice to the Trustee and to which the Trustee may agree.

### **18.4 Member Contributions**

A Member shall make Contributions to the Fund in accordance with this Deed, and as specified in the Eligible Application or, subject to the Relevant Law, by arrangement with the Trustee.

### **18.5 Contributions by Contributor**

A Member may request that the Trustee accept Contributions from a Contributor in respect of that Member or the Relevant Law allows Contributions from the Contributor and the

Trustee may in its absolute discretion accede to or refuse such request and impose such conditions or require the Contributor to give such undertakings or enter into such agreement as the Trustee may specify.

### **18.6 Excessive Contributions**

No Employer, Member or Contributor shall make Contributions to the Fund in any Year of Income which exceed the maximum amount of deductible Contributions calculated in accordance with Relevant Law which can be made to the Fund in that Year of Income without jeopardising the status of the Fund as a complying superannuation fund.

### **18.7 Unpaid Contributions**

The Trustee shall not be required to take any action to recover any unpaid Contributions from Employers or any other person who has agreed to make Contributions to the Fund in respect of a Member.

### **18.8 Late Contributions and Non-Payment**

If the Contributions payable by a Member are not paid to the Fund as and when required, the Trustee may impose such special terms, conditions and restrictions in respect of the Member's Membership as it thinks fit, including, without limitation, reducing or otherwise adjusting all or any benefits to be provided for or in respect of the Member or refusing to accept further Contributions by or in respect of the Member.

### **18.9 Additional Contributions**

An Employer, Member or Contributor may make such additional Contributions to the Fund as the Trustee may from time to time permit and those Contributions shall be dealt with by the Trustee as the Employer, Member or Contributor (as the case may be) directs.

### **18.10 Refund of Payment**

If any money paid to the Fund will or will be likely to jeopardise the status of the Fund as a complying superannuation fund or is found by the Trustee to have been paid by mistake (whether of law or fact), then, subject to SIS, the Trustee may refund that money to the person who paid it to the Fund but the Trustee shall not be liable to pay any interest, account for any earnings or compensate the person who paid that money in any way and a person shall not be deemed to have become an Employer or a Member merely by reason of the receipt by the Trustee of that money.

### **18.11 Deduction of Contributions**

- (a) Where it is legally possible, every Member who is an Employee is deemed to have authorised the Employer to deduct from his or her salary on each pay day in relation to the Member such amount as will provide his or her contributions to the Fund.
- (b) Any amount deducted from a Member's salary by an Employer in accordance with clause 18.11(a) shall be held upon trust by the relevant Employer for the benefit of the Fund and shall be paid to the Fund, having regard to any relevant requirements of a Relevant Law, in the manner and at the times determined by the Trustee after consulting the Employer.

### **18.12 Automatic Deduction of Contributions**

Where it is legally possible, a Member or Contributor may authorise the Trustee to deduct from his or her account held with a bank or other entity holding money in an account on his

or her behalf at nominated intervals such amount to provide his or her contributions to the Fund.

### 18.13 Splittable Contributions

- (a) A Member may, in accordance with terms and conditions prescribed by the Trustee, request the Trustee to allocate an amount (the **Split Amount**) up to an amount equal to the Member's Splittable Contributions to the Member's Spouse.
- (b) Where clause 18.13(a) applies in respect of a Member, subject to terms and conditions prescribed by the Trustee, the Trustee will have power:
  - (i) to rollover or transfer in favour of the Spouse the Split Amount to another approved arrangement nominated by the Spouse; or
  - (ii) credit the Split Amount to a Spouse Account of the Spouse; and
  - (iii) to reduce or adjust the benefits payable to, or in respect of, the Member in such manner as the Trustee considers appropriate.
- (c) Subject to Relevant Law, the Trustee will have power to accept into the Fund amounts representing contributions split in favour of Members or Spouses of Members from the governing bodies of other complying superannuation funds and retirement savings accounts.
- (d) Subject to Relevant Law, the Trustee may set terms and conditions for the maintenance of Spouse Accounts and may provide for amounts (including costs, expenses, charges and positive and negative interest and investment earnings) to be credited and debited to Spouse Accounts.
- (e) For the purposes of this clause, **Splittable Contributions** has the meaning given to that expression under Relevant Law.

## 19. Redemption Provisions

### 19.1 Terms of redemption

Upon the Trustee determining to pay a benefit under this Deed, the Trustee shall procure the redemption of the number of Units in the Investment Option from which the benefit is being paid which are required to be redeemed to pay the benefit. The Trustee shall procure such redemption within the time period stated in clause 19.7. The Trustee may also procure the redemption of Units for the purpose of applying the proceeds of such redemption to pay any taxes or expenses of the Fund, any fees or remuneration of the Trustee or any life insurance premiums.

### 19.2 Exit Price

- (a) Subject to clause 19.2(b), a Unit shall be redeemed at the Exit Price.
- (b) Wherever SIS requires it, if the Trustee does not believe that the Exit Price is fair and reasonable or cannot calculate the Exit Price, the Unit shall be redeemed at a price that is fair and reasonable, in accordance with SIS.

### 19.3 Units to be cancelled

Where Units are redeemed, the Units will be cancelled and will not be re-issued.

## **19.4 Funding of redemption**

In relation to the method of redemption of Units under the foregoing provisions, the Trustee may apply part of the relevant Investment Option, and where necessary may realise investments.

## **19.5 Realisation of Assets**

- (a) Wherever it is necessary, in order to fulfil its obligations to procure the redemption of Units, that cash or investments or both be released from the relevant Investment Option, the Trustee shall release such cash and realise such investments and shall pay out of the moneys so released the benefit payable.
- (b) The Trustee may in anticipation of benefit payments at any time it deems expedient realise specified investments in order that cash shall be available in the relevant Investment Option to enable benefits to be paid.

## **19.6 Entries in Register**

The Trustee shall make an appropriate entry in the Register specifying the number of the Units which have been cancelled by reason of their having been redeemed out of the relevant Investment Option.

## **19.7 Time for payment of benefit**

The Trustee covenants that it will pay or commence to pay or cause to be paid or to commence to be paid a benefit within thirty (30) days of the date on which the benefit becomes payable and, in the case of a benefit to be paid to dependants of a Member or the legal personal representative of a Member, within thirty (30) days of the date on which the Trustee determines the person or persons to whom the benefit is payable.

## **19.8 Transfer of assets in specie**

- (a) The Trustee may, in its sole discretion, determine that a benefit payment shall be satisfied, in part or whole, by the transfer to the payee of the benefit of investments of the relevant Investment Option at their Market Value except that there shall be deducted from that amount an amount determined by the Trustee representing the outgoings and expenses which would have been incurred on the date the Market Value is determined if all the investments of the relevant Investment Option had been realised on that day and the Trustee shall do all things necessary to effect such transfer in accordance with the Relevant Law.
- (b) The total of outgoings and expenses in respect of the transfer of such investments, to the extent that they are not included in the outgoings and expenses ordinarily incurred in redeeming the Units in accordance with this clause 19 and calculated in accordance with clause 20, shall be borne by the payee of the benefit.

## **20. Valuation of Fund and Calculation of Unit Prices**

### **20.1 Valuation Dates**

The Trustee shall ascertain the Net Asset Value of the Fund and each Investment Option weekly at the close of business on every Friday (or the next business day if that Friday is not a business day) or more frequently as the Trustee may from time to time determine (the **Valuation Date**).

## 20.2 Net Asset Value

- (a) The Net Asset Value of the Fund is calculated by deducting from the value of the Fund's Gross Assets, the value of the Fund's Liabilities.
- (b) The Net Asset Value of an Investment Option is calculated by deducting from the value of the relevant Investment Option's Gross Assets, the value of the relevant Investment Option's Liabilities.

## 20.3 Valuation Register

The Trustee shall compile and keep current a valuation register which shall list all investments of the Fund held at each Valuation Date and their respective values. The Valuation Register shall be of such type or in such form as is determined by the Trustee.

## 20.4 Valuation of investments

The value of an investment to be entered in the Valuation Register shall be the Market Value of the investment at the close of business on the business day immediately preceding the Valuation Date (unless this Deed specifies another date for the valuation of a particular investment).

## 20.5 Calculation of Entry Price

The Entry Price on any day (the **Relevant Day**) shall be such an amount as is ascertained by dividing the Net Asset Value of the relevant Investment Option by the number of Units for the time being on issue in that Investment Option (determined in each case as at the close of business on the Valuation Date immediately following the Relevant Day) plus any Transaction Costs and rounded up or down, as the case may require, to the nearest fourth decimal place of one dollar (\$1.00)).

## 20.6 Calculation of Exit Price

The Exit Price on any day (**the Relevant Day**) shall be such an amount as is ascertained by dividing the Net Asset Value of the relevant Investment Option by the number of Units for the time being on issue in that Investment Option (determined in each case as at the close of business on the Valuation Date immediately following the Relevant Day) less any Transaction Costs and rounded up or down, as the case may require, to the nearest fourth decimal place of one dollar (\$1.00)).

## 20.7 Transaction Costs

The Trustee may in its absolute discretion elect to waive in full or in part the amount of any Transaction Costs referred to in clause 20.5 or clause 20.6.

## 20.8 Unit Price when converting Units to another Investment Option

When converting Units from one Investment Option (**Old Option**) to another Investment Option (**Specified Option**) pursuant to clause 22, the Exit Price of the Units withdrawn from the Old Option on the conversion day (the **Relevant Day**) shall be calculated in accordance with clause 20.6 and the Entry Price of the Units acquired in the Specified Option shall be calculated in accordance with clause 20.5, provided that the Valuation Date for the calculation of both the Exit and Entry Prices is the same.

## **21. Income of the Fund**

### **21.1 Trustee to receive income**

The Trustee as trustee of the Fund shall receive all moneys, rights and other property which are paid or receivable as income of the Fund.

### **21.2 Calculation of Net Income**

The Net Income of a Plan shall be calculated by deducting the following costs or expenses from the Gross Income;

- (a) all taxation, costs, disbursements, commissions, foreign-imposed withholding or other taxes, fees, management charges (including the Trustee's remuneration) and other proper outgoings and losses in respect of the investments of the Fund and expenses of managing the Fund and administering the trusts of this Deed;
- (b) the amount of any provision which in the opinion of the Trustee should be made.

### **21.3 Determination and Reinvestment of Net Income**

The Net Income of each Plan which has arisen in respect of each Accrual Period shall be determined by the Trustee and shall be allocated to the Units in that Plan. The Members shall be deemed to have irrevocably reinvested and authorised the Trustee on their behalf to reinvest such income entitlement in the Fund without the issue in respect of their Members' Accounts of any additional Units (unless the Trustee in its discretion elects to issue additional Units at a price or value determined in accordance with clause 4.4) and the amount reinvested shall be debited to their respective accounts and shall be reinvested in investments as part of that Plan. The Current Unit Value of each Unit shall be adjusted to reflect that reinvestment and the Trustee shall not distribute the Net Income of each Plan, which has arisen in respect of such Accrual Period.

### **21.4 Special Provisions regarding income**

- (a) The Units allocated to a Member's Account which have been redeemed on the last day of an Accrual Period shall not participate in or be allocated a share of the Net Income of the Fund in respect of that Accrual Period.
- (b) The income entitlement of each Unit for an Accrual Period shall be rounded down to the fourth decimal place of one dollar (\$1.00) and the total amount to which a Member's Account shall be entitled for all Units held in respect of it, shall be rounded down to the nearest one cent (1c).

## **22. Conversion of Units**

### **22.1 Conversion Notice**

Subject to clause 22.2, the Trustee will, upon receipt of a Conversion Notice from a Member, convert the Units to which such Conversion Notice relates into Units of another Investment Option in which the Member wishes Units to be taken up in respect of their Member Account (the **Specified Option**). The Conversion Notice shall be in such form and lodged in accordance with any procedures as are from time to time prescribed by the Trustee and shall specify the number of Units required to be converted and the name of the Specified Option.

## **22.2 Redemption of Units and Issue of Units in Specified Option**

Upon receipt of a Conversion Notice, the Trustee shall cause the redemption of the Units comprised in the Conversion Notice in accordance with clause 19 provided that the payment of any such amount will be satisfied by the crediting of such amount to the Specified Option and the issue in respect of the relevant Member Account of Units in the Specified Option, the number of such Units to be calculated in accordance with clause 20.8.

## **23. Transfers to and from Approved Arrangements**

### **23.1 Transfers to Approved Arrangements**

- (a) Subject to clauses 24.6 and 31, upon the request of a Member or as otherwise allowed under Relevant Law, the Trustee may at any time while the person is a Member transfer to an Approved Arrangement in which the Member participates, or is eligible to participate, in lieu of providing a benefit from the Fund, an amount of money or other assets or a combination of money and other assets representing all or part of the amount determined by the Trustee to be the Member's interest in the Fund at the time of making the determination.
- (b) Upon the transfer of the Member's whole benefit from the Fund being effected, all interest of whatsoever nature of the Member in the Fund shall cease and the Trustee shall thereby be released and discharged accordingly in respect of the Member.
- (c) Upon the transfer of a part of the Member's benefit from the Fund being effected, the Trustee shall thereupon be released and discharged in respect of the part transferred, and the Trustee may thereafter reduce or otherwise adjust any benefit to be provided to or in respect of the Member to such extent as it in its discretion considers to be appropriate having regard to the amount transferred.

### **23.2 Unclaimed Money and Approved Arrangements**

- (a) The Trustee shall have the right in accordance with the relevant requirements of a Relevant Law to transfer an amount of money representing all of the amount determined by the Trustee to be a Member's interest in the Fund at the time of making the determination to an Approved Arrangement.
- (b) The Trustee shall have the right in accordance with the relevant requirements of a Relevant Law to pay Unclaimed Money as required by the relevant requirement of a Relevant Law.
- (c) Upon the transfer or payment of the whole or any part of a Member's interest in the Fund being effected, the Trustee shall be released and discharged in respect of the whole or part transferred or paid accordingly in respect of the Member.

### **23.3 Transfers from Approved Arrangements**

Subject to clause 23.4 and to clause 31, the Trustee shall have the right to receive from the trustees or administrators or other controlling body of an Approved Arrangement by way of transfer or otherwise any money or other assets in respect of a Member's interest in that other fund and the Trustee shall increase the benefits otherwise payable to or in respect of the Member in such manner (if any) as the Trustee and the Member may agree.

### **23.4 Conditions**

Subject to clause 31, the Trustee shall have power to impose such conditions relating to any amount transferred pursuant to this clause as the Trustee shall think fit.



## **24. MySuper Members**

### **24.1 MySuper provisions priority**

The provisions of this clause 24 apply notwithstanding anything in this Deed to the contrary and will prevail to the extent of any inconsistency, except where there is an inconsistency between this clause 24 and the provisions of clause 31.

### **24.2 MySuper investment strategy**

Notwithstanding anything in this Deed to the contrary the Trustee must ensure that all MySuper Interests are invested in the same diversified investment strategy. This investment strategy may include a strategy which varies based on the age of the MySuper Member (or any other factors which the Relevant Law permits) (**Lifecycle Strategy**).

### **24.3 MySuper benefits**

If the Trustee offers a kind of option, benefit or facility to a MySuper Member, it must ensure that all MySuper Members are entitled to access the same option, benefit or facility in respect of their MySuper Member Account.

### **24.4 MySuper costs allocation**

- (a) The Trustee will ensure that the attribution of amounts, including costs, expenses, charges and positive and negative interest and investment earnings, to a MySuper Member Account is done in a way which:
  - (i) does not stream gains or losses that relate to certain investment strategies, to only some Members (except to the extent that the difference is due to the investment strategy being a Lifecycle Strategy); and
  - (ii) utilises the same process to attribute those amounts for all Members (except to the extent that there is a difference in process due to a subsidisation of amounts by Employers).
- (b) Where the amounts referred to in 24.4(a) are subsidised by Employers, the Trustee must only allow the subsidisation to take place on the basis that the Employer subsidises these amounts equally in respect of each of its employees' MySuper Interests.

### **24.5 MySuper Contributions**

The Trustee must accept Contributions on behalf of a MySuper Member into their MySuper Member Account from all sources and of all kinds, except to the extent that the Trustee is permitted to refuse acceptance of such Contributions by the Relevant Law.

### **24.6 Transfer of MySuper Interests**

- (a) The Trustee must not transfer a MySuper Interest so that it becomes an interest in the Fund other than a MySuper Interest, unless the affected MySuper Member consents in writing to the transfer no more than 30 days prior to the transfer.
- (b) The Trustee must not transfer a MySuper Interest to another Approved Arrangement unless:
  - (i) the Relevant Law obliges the Trustee to do this; or

- (ii) the affected MySuper Member consents in writing to the transfer no more than 30 days prior to the transfer.

## **24.7 No pension from MySuper**

The Trustee must not pay a pension from a MySuper Member Account.

## **25. Meetings**

### **25.1 Meetings of the Members**

- (a) The Trustee may at any time and the Trustee shall, on the requisition in writing of either:

- (i) one hundred (100) or more Members; or
- (ii) Members who hold an aggregate equal to twenty per cent (20%) or more of the Net Asset Value of the Fund as at the date of the deposit of the requisition;

convene a meeting of the Members.

- (b) Subject to Relevant Law, the Trustee may, at any time, and the Trustee shall on the requisition in writing of whichever is the lesser of one hundred (100) Members or of Members whose Members' Accounts at the date of the deposit of the requisition hold not less than one-fifth (1/5th) of the number of Units in issue in a Plan or one-fifth (1/5th) convene a meeting of the Members who are Members of that Plan.

### **25.2 Requirements for holding meeting on requisition**

A requisition by Members pursuant to this clause 25, 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 requisitioners and deposited at the registered office of the Trustee and may consist of several documents in like form each signed by one or more of the Members. If the Trustee does not proceed to convene a meeting within twenty-one (21) days from the date of the requisition being deposited, the Members, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three (3) months from the date of deposit of the requisition. Any meeting convened under this clause by the Members will be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Trustee.

### **25.3 Notice of meeting**

At least ten (10) business days' notice in writing of a meeting convened pursuant to this clause 25, specifying the place, day and hour of meeting, the terms of any resolution to be proposed, and the general nature of any other business to be transacted and such further information as the Trustee may think fit, shall be given to all Members and to the Trustee, but the accidental omission to give such notice to, or the non-receipt of a notice of meeting by, a Member shall not invalidate the meeting. The Trustee and any director, secretary, officer, solicitor or auditor of or for it and any counsel instructed by the solicitor for the Trustee, and the Auditor of the Fund, may attend any meeting of Members and all such persons shall have the right of audience.

### **25.4 Quorum**

No business shall be transacted at any meeting unless a quorum is present. The quorum necessary for a meeting at which an ordinary resolution is to be proposed, shall be at least

five (5) persons who are or who represent by proxy Members who hold Units with an aggregate value equal to ten per cent (10%) or more of the Net Asset Value of the Fund (or in the Plan, in the case of a meeting of Members of a Plan) as at the date of the meeting. The quorum necessary for a meeting at which an extraordinary resolution is to be proposed, shall be persons who are or who represent by proxy Members having an aggregate value equal to fifty-one per cent (51%) or more of the Net Asset Value of the Fund (or in the Plan, in the case of a meeting of Members of a Plan) as at the date of the meeting. If within fifteen (15) minutes from 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; or
- (b) if called for the purpose of passing an extraordinary resolution, stand adjourned for such period as the chairman shall direct provided notice of the proposed extraordinary resolution 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 shall have been given by the Trustee to the Members.

At an adjourned meeting, the Members present in person or by proxy shall form a quorum and shall have power to pass such ordinary or extraordinary resolution. The Trustee or its duly appointed representative shall be entitled to attend and address the meeting.

## **25.5 Chairman**

A person nominated by the Trustee (whether a Member or not) shall preside at a meeting of Members, and if no such person is present within fifteen (15) minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman.

## **25.6 Manner of voting**

Every question submitted to a meeting of the Members shall be decided by a show of hands unless it is a question which under this Deed, the Relevant Law or SIS must be decided by a percentage of the persons voting at a meeting of the Members or by Members holding Units with an aggregate value equal to or greater than a percentage of the aggregate value of all Units for the time being in issue or a percentage of the aggregate value of Units held in respect of the Members' Accounts of to Members voting at a particular meeting or unless a poll be properly demanded, and in the case of an equality of votes, the chairman shall both on a show of hands and on a poll have a casting vote in addition to the vote or votes (if any) to which he may be entitled as, or as proxy for, a Member.

## **25.7 Counting of votes**

On a show of hands, every Member who is present in person or by proxy shall have one (1) vote, and on a poll, every Member who is present in person or by proxy shall have one (1) vote for each dollar of the aggregate value of the Units held in respect of the Member's Accounts.

## **25.8 Voting by Members of unsound mind**

A Member of unsound mind or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll by his committee, curator bonus or other person in the nature of a committee or curator bonus appointed by such Court and such committee, curator bonus or other person may on a poll vote by proxy.

**25.9 Objection to qualifications of voter**

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 cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the meeting and his decision shall be final and conclusive.

**25.10 Proxies**

Subject to the Relevant Law, 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 Member.

**25.11 Signature of proxy**

The instrument appointing a proxy shall be in writing under the hand of the appointor or of their attorney duly authorised in writing.

**25.12 Who may act as proxy**

Any person may act as a proxy whether or not they are a Member.

**25.13 Deposit and validity of proxy**

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 such power or authority shall be deposited with the Trustee not less than two (2) clear days before the day appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall be treated as invalid. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date named in it as the date of its execution.

**25.14 Form of proxy**

An instrument appointing a proxy may be in the following form or in any other form which the Trustee shall approve:

"I  
.....of.....  
.....  
being a Member of hereby appoint.....of.....to vote  
for me and on my behalf at the Meeting of Members to be held on.....  
the.....day of.....2004 and at any adjournment thereof.  
\*in favour of  
This form is to be used  
\*against the resolution.  
Signed at.....by me this.....day of.....2004  
\*Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he  
thinks fit)."

### **25.15 Validity of vote given by proxy**

A vote given in accordance with the terms of an instrument of proxy shall be 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 as aforesaid shall have been received by the Trustee before the commencement of the meeting or adjourned meeting at which the proxy is used.

### **25.16 Demand for poll**

At any meeting of the Members, unless a poll is demanded by the chairman or at least ten (10) Members who are present or represented by proxy and the aggregate value of the Units held in respect of those Members' Accounts shall be at least twenty thousand dollars (\$20,000), 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 after any question is put to a show of hands.

### **25.17 Manner of poll**

If at any meeting a poll is demanded as aforesaid, it shall be taken in such manner and either at once or after an adjournment as the chairman directs. A demand for a poll may be withdrawn.

### **25.18 Adjournment of meeting**

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

### **25.19 Demand for poll on election of chairman and adjournment of meeting**

Any poll demanded at any meeting of Members or the election of a 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.

### **25.20 Effect of resolution**

A resolution (whether ordinary or extraordinary) passed at a meeting of the Members duly convened and held in accordance with these presents shall be binding upon all the Members, whether present or not present at such meeting and each of the Members shall be bound to give effect thereto accordingly.

### **25.21 Alteration, etc. to Deed**

Without limiting the provisions of clause 27 or the rights and discretions conferred in this Deed, a meeting of Members shall have the power by extraordinary resolution to sanction or assent to any alteration, addition, or modification proposed by the Trustee or to any of the covenants or provisions of this Deed and to authorise the Trustee to execute any supplemental deed embodying any such addition, modification or cancellation provided that a separate meeting of Members of a Plan may sanction an alteration, addition or modification which, in the opinion of the Trustee, affects only the rights or interests of Members in that Plan.

## 25.22 Minutes

Minutes of all resolutions passed and proceedings at every meeting of Members 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 or by the chairman of the next succeeding meeting (if any) of Members, shall be conclusive evidence of the matters therein stated.

## 26. Policy Committees

- (a) An Employer may, at any time, determine that a Policy Committee representing that Employer and the Members employed by that Employer be appointed.
- (b) The Trustee must, whenever required to do so by SIS, take all reasonable steps to ensure that a Policy Committee is appointed.
- (c) A Policy Committee shall be formed:
  - (i) at the discretion of the Employer, where SIS does not require its formation; or
  - (ii) in accordance with clause 26(d), where SIS does require its formation.
- (d) One half of the members of the Policy Committee shall be Employer representatives nominated by the Employer (**Employer Representatives**) and one half shall be Member representatives (**Members' Representatives**). The Members' Representatives and the Employer Representatives shall be appointed in a manner determined by the Employer.
- (e) Any vacancy in the office of membership of the Policy Committee shall, where such vacancy is required to be filled, be filled within 90 days (or within such other number of days as are provided for in SIS) of the date on which the vacancy occurred.
- (f) Where the Act requires the appointment of a Policy Committee, the Trustee must:
  - (i) ensure, so far as practicable, that any Policy Committee so formed meets at least once in every twelve month period or in such other period required under SIS;
  - (ii) provide such facilities as are reasonably necessary to enable the Policy Committee to meet and function effectively;
  - (iii) arrange for a representative of the Trustee to attend each meeting. of the Policy Committee if the Policy Committee so requests.
- (g) The Trustee may recoup:
  - (i) costs incurred in providing facilities and information and attending meetings of the Policy Committees, from the Fund; and
  - (ii) costs additional to those in paragraph (i) incurred as a consequence of the actions of any specific Policy Committee, by levying a charge against the benefits of those Members who are represented by that Policy Committee.
- (h) Each Policy Committee may, subject to the requirements of SIS, regulate its meetings as it sees fit, provided always that:
  - (i) valid meetings can be held by telephone conference;

- (ii) two thirds of the members of the Policy Committee shall be a quorum;
  - (iii) a resolution of the members of the Policy Committee shall be valid and binding if at least two thirds of the total number of the members of the committee have voted in favour of it;
  - (iv) a resolution, in writing, signed by at least two thirds of the members of the Policy Committee shall have the same effect and validity as a resolution of the members of the committee passed at a duly convened meeting.
- (i) Each Policy Committee shall represent its Members on all matters related to the administration of the Fund in so far as they affect those Members and, without limiting the generality of that function, shall:
- (i) provide an avenue for the Trustee to obtain the views of the Members on:
    - (A) the operation and performance of the Fund;
    - (B) the investment strategy and investment performance of the Fund; and
    - (C) their information needs;
  - (ii) assist the Trustee in dealing with complaints or inquiries about the operation or management of the Fund; and
  - (iii) provide an avenue for Members to inquire about:
    - (A) the investment strategy and the investment performance of the Fund; and
    - (B) the Fund's operation or performance;
  - (iv) perform such other functions as are required under SIS.

## **27. Amendment of Deed**

### **27.1 General Power of Amendment**

Subject to the provisions of this clause 27, the Trustee may at any time and from time to time by deed or by written declaration or by resolution of the directors of the Trustee amend, delete from or add to all or any of the provisions contained in this Deed including the provisions of this clause 27 PROVIDED THAT any such amendment deletion or addition is in accordance with the relevant requirements of a Relevant Law.

And PROVIDED FURTHER THAT no such alteration, addition or deletion shall reduce or prejudice the Benefits secured to a Member in pursuance of this Deed in respect of contributions paid in respect of the Member to the date of such alteration unless:

- (a) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the fund; or
- (b) the reduction is required to enable the fund to comply with the Relevant Law; or
- (c) the consent of the Member, and if the benefits are subject to a payment split in accordance with the Relevant Law, of the Non-Member Spouse, whose rights are affected are first obtained; or
- (d) the written approval of the Regulator is obtained.

## **27.2 Amendments to Secure Favourable Tax Treatment**

Notwithstanding the provisions of clause 27.1, the Trustee may at any time and from time to time by deed or by written declaration or by resolution of the directors of the Trustee amend, delete from or add to all or any of the provisions contained in this Deed in order to ensure:

- (a) that the benefits being provided from the Fund secure the most favourable taxation treatment available to the Fund from time to time; and
- (b) as far as it may lawfully be arranged, that this Deed and the benefits payable hereunder shall be exempt from any Taxes.

Any amendment, deletion or addition made pursuant to this clause 27 shall not be deemed to be detrimental to, or a reduction of, the benefits of a Member already secured at the date of such amendment, deletion or addition.

## **27.3 Effective Date of Amendments**

Subject to the foregoing provisions of this clause, any amendment, deletion or addition made pursuant to clause 27.1 or 27.2:

- (a) shall come into force on the making of the deed, written declaration or resolution (as the case may be) and shall take effect as from that date or as from such earlier or later date as may be specified for that purpose in the said deed, written declaration or resolution; and
- (b) for the time being in force shall be of the same validity as if it had been originally contained in this Deed and may in like manner be amended, deleted from or added to.

## **27.4 Notification to Members**

The Trustee shall in accordance with the relevant requirements of any Relevant Law notify each Member and each Non-Member Spouse whose Member-Spouse's benefits are subject to a payment split in accordance with the Relevant Law of any amendment, deletion or addition made pursuant to clauses 27.1 or 27.2 and all Members and Non-Member Spouses shall be bound thereby. No accidental failure or omission to give any such notification shall prejudice or invalidate the relevant amendment, deletion or addition.

## **28. Miscellaneous**

### **28.1 Powers of Employer not Affected**

Nothing in this Deed shall be deemed to affect, prejudice or alter in any way the powers of an Employer with regard to the dismissal or remuneration of or any dealings whatsoever with any of its Employees and nothing contained in this Deed renders an Employer liable or responsible, and an Employer is not liable or responsible in any way, for any act or omission of the Trustee or another Employer or an employee or other person in connection with this Deed, or the Fund. Any benefits to which a Member or other person may be or may claim to be entitled under this Deed and any forfeiture of benefits shall not be used or alleged or claimed as damages or as grounds for increasing damages in any action or claim by the Member or by anyone claiming through or under the Member against an Employer in respect of any such dismissal or dealing or otherwise.



## 28.2 Employers not Fiduciary

Except to the extent expressly provided in this Deed, when acting in its capacity as an Employer under this Deed, an Employer is in no sense under a fiduciary or other duty and has in relation to the exercise, non-exercise or partial exercise of any power vested in an absolute and uncontrolled discretion and is not required to give to any person any reason for or explanation of its exercise, non-exercise or partial exercise of such a power.

## 28.3 Employment Dates

If any doubt or dispute arises as to the date on which a person entered or left the employ or service of an Employer, a certificate by the Employer on the matter shall be final, conclusive and binding on all interested persons.

## 28.4 Appointment of Receiver

If at any time a receiver, receiver and manager, liquidator or trustee in bankruptcy is appointed in respect of an Employer or over the property of an Employer or if an Employer is placed under the official management of a person or a committee of management (such receiver, receiver and manager, liquidator, trustee or person or committee appointed as official manager being for the purposes of this clause 28 called the **Receiver**) then notwithstanding anything expressed or implied to the contrary in this Deed other than clause 31:

- (a) all the powers vested in or exercisable by that Employer in any capacity shall be deemed to be vested in or exercisable by the Receiver until the Receiver is discharged from or otherwise ceases to hold office; and
- (b) references in this Deed to that Employer shall be deemed to be references to the Receiver until the Receiver is discharged from or otherwise ceases to hold office.

## 28.5 Determination of Disputes

If any question shall arise regarding the construction or meaning of this Deed or as to the rights or obligations of a Member, Employer or any other person hereunder, then (except to the extent otherwise expressly provided in this Deed) the decision of the Trustee shall be final, conclusive and binding on all interested persons.

## 28.6 Governing Law

- (a) This Deed is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

## 29. Notice

### 29.1 Methods of Notice

A notice, cheque or other written matter (all of which are in this clause 28.5 collectively referred to as **notice**) may be given to an Employee, Member Beneficiary or any person claiming a benefit from the Fund by handing it to the person personally or by leaving it at his or her address last known to the person on giving such notice or by sending it to that address by ordinary prepaid post.

## 29.2 Additional Methods of Notice

In addition to the methods of notice specified in clause 29.1, notification of any matter may be given:

- (a) to an Employee (whether or not a Member), by way of a notice placed on notice boards normally utilised for information dissemination purposes in the workplace of such Employee; or
- (b) to an Employee, Member or a Beneficiary, by way of a notice placed in a newspaper circulating in such place or places as the Trustee considers appropriate in the circumstances.

## 29.3 Deemed Notice

A notice shall be deemed to have been received:

- (a) in the case of a notice given or served by hand, at the time of delivery;
- (b) in the case of a notice given or served by post, at the expiration of two days after posting;
- (c) in the case of a notice placed on a notice board as provided in clause 29.2(a), on the normal working day on which the notice is placed on the notice board or, if the date of placement is not a normal working day, the normal working day next following the placement thereof; and
- (d) in the case of a notice published in a newspaper as provided in clause 29.2(b), two days after the date such newspaper is published,

or, in any case, at such later date (if any) as the Trustee determines to appropriate in the circumstances.

## 30. Complaints and Enquiries Procedures

The Trustee shall establish arrangements and procedures under which Members or Beneficiaries have the right to make inquiries into or complaints about the operation or management of the Fund in relation to the Member or Beneficiary making the inquiry or complaint in accordance with any requirement of a Relevant Law.

## 31. Overriding Compliance Provisions

### 31.1 Overriding Application of Relevant Law

Notwithstanding any power of amendment, deletion or addition exercisable under any other provision of this Deed:

- (a) any provision or requirement of a Relevant Law which is expressly required by the Relevant Law to be included in this Deed in order to comply with or satisfy a requirement of the Relevant Law shall be deemed to be included in this Deed;
- (b) if there is a conflict between a Compliance Provision and any other provision of this Deed which is not a Compliance Provision, the Compliance Provision shall prevail to the extent of the conflict;
- (c) if any dispute or doubt arises as to the existence, meaning, application or effect of any requirement of a Relevant Law or of a Compliance Provision, or if there is a

conflict between Compliance Provisions, the Trustee shall determine that doubt, dispute or conflict and such determination shall be final and binding on all interested persons;

- (d) the Trustee and each Employer shall be empowered to, and shall, do or procure to be done such acts, matters and things as are necessary or desirable in order to comply with or satisfy any relevant requirement of a Relevant Law; and
- (e) the Trustee and each Employer shall not do or procure or permit to be done any act, matter or thing which would cause the Fund to breach or to fail to comply with or satisfy an applicable requirement of a Relevant Law.

### **31.2 Exclusion of Liability**

No Trustee or Employer shall be liable personally in respect of any cost, loss or damage incurred by any person by reason of anything done or to be done under, or failure to satisfy, a Compliance Provision.

## **32. Statutory Financial Management of Fund**

If the Trustee determines that the financial position of the Fund is unsatisfactory or that the funding and solvency of the Fund is such that the statutory financial management provisions of SIS apply, then the Trustee must initiate winding up proceedings or otherwise administer and deal with the assets of the Fund in accordance with such provisions of SIS.

## **33. Family Law**

### **33.1 Trustee's Powers**

Notwithstanding any other provisions of this Deed, but subject to clause 31, the Trustee will have power to do or to procure to be done all acts, matters and things which the Trustee may deem expedient or necessary to comply with the Relevant Law including, but not limited to:

- (a) admit or refuse to admit a Non-Member Spouse to Membership in accordance with clause 33.2;
- (b) provide information in accordance with and as required by the Relevant Law;
- (c) determine the accrued benefit multiple for the purposes of the *Family Law Act 1975* and any regulations prescribed thereunder;
- (d) do all things necessary to give effect to or administer any agreement, arrangement, court order, notice or request in respect of a Non-Member Spouse's Entitlement or a Member-Spouse's Superannuation Interest or Entitlement as required under the Relevant Law;
- (e) adjust or reduce the Member-Spouse's Superannuation Interest or any other amount, benefit or Entitlement in respect of the Member-Spouse that the Trustee considers represents the amount to which a Non-Member Spouse is entitled as calculated under the Relevant Law;
- (f) pay to or for the benefit of the Non-Member Spouse, transfer or roll over to an Approved Arrangement to be held for the benefit of the Non-Member Spouse the amount that the Trustee considers represents at least the value of the Non-Member Spouse's Entitlement at the time the amount is paid, transferred or rolled over (as the case maybe) the Transferable Benefits or such other amount as the Trustee may

determine subject to and in accordance with the Relevant Law if the Non-Member Spouse is not a Member and will not be admitted to Membership pursuant to clause 33.2

### **33.2 Non-Member Spouse**

- (a) Subject to clause 33.2(d), the Trustee may admit a Non-Member Spouse to Membership as it thinks fit subject to the Relevant Law.
- (b) If the Trustee refuses to admit a Non-Member Spouse to Membership pursuant to clause 33.2(a), the Trustee will not be bound to provide any reason for such refusal, create an interest in the Fund in respect of the Non-Member Spouse or take any further action unless deemed necessary by the Trustee or required by the Relevant Law.
- (c) If the Trustee admits a Non-Member Spouse to Membership pursuant to clause 33.2(a):
  - (i) the Trustee will create an interest in the Fund in respect of the Non-Member Spouse in accordance with the Relevant Law;
  - (ii) the Non-Member Spouse will be treated as having been admitted to Membership on the date that the Trustee creates an interest for the Non-Member Spouse under clause 33.2(c)(i) or such other date as required under the Relevant Law; and
  - (iii) from the date the Non-Member Spouse is admitted to Membership, he or she will be bound by the terms, trusts and conditions of this Deed.
- (d) If a Non-Member Spouse is already a Member of the Fund then he or she will continue to be a Member in respect of his or her Entitlement (including the amount (if any) determined under clause 33.1 unless clause 33.1(f) applies.

## **Schedule 1: GuildSuper**

### **(clause 3.2)**

1. Pursuant to clause 3.2, the Trustee hereby establishes a Plan, to be known as "GuildSuper, a division of the Guild Retirement Fund" (**the GuildSuper Plan**).
2. The rules that apply to the GuildSuper Plan are attached to this schedule.

# Rules of the GuildSuper Plan

## 1. Applications of the Rules

These Rules will apply to all GuildSuper Members and will be read and construed and have the same force and effect as if set out in the body of the Deed, and if there is a conflict between these Rules and a clause of the Deed, these Rules prevail to the extent of the conflict.

## 2. Definitions

**Authorised Investment** means all or any of the following:

- (a) Public Securities;
- (b) Trustee Securities;
- (c) Debentures;
- (d) bills of exchange, promissory notes or other negotiable instruments drawn, accepted or endorsed by a Banking Corporation or any financial corporation registered pursuant to the *Financial Corporations Act 1974* and which is an Eligible Corporation;
- (e) deposits with a corporation that is declared by ASIC pursuant to a Relevant Law to be an authorised dealer in the short term money market and which is a Banking Corporation or a subsidiary of a Banking Corporation, or is a corporation that is authorised by the Reserve Bank of Australia as a dealer in the official money market;
- (f) deposits with, or the acquisition of, certificates of deposit or any other security issued by a Banking Corporation or a corporation authorised to carry on banking business pursuant to the laws of the Commonwealth of Australia and carrying on banking business in that country and having shareholders funds on a consolidated basis (as at the date of its most recently audited consolidated financial statements), in excess of the equivalent (at that date) of ten million Australian dollars (AUD\$10,000,000);
- (g) subject to Rule 6, Call Options and Put Options;
- (h) subject to Rule 6, Futures Contracts;
- (i) deposits or insurance policies effected with or annuities purchased from or bonds issued by a corporation which is authorised to carry on life insurance business in Australia;
- (j) investment in shares of or deposits with any permanent building society;
- (k) any security or other investment a trustee is permitted to invest in under Relevant Law.

**Banking Corporation** means a bank as defined in the *Banking Act 1959* (or any modification thereof or substitution therefore) or as constituted under any law of the Commonwealth of Australia or any State or Territory of Australia;

**Call Option** means a call option contract regularly traded on a Recognised Market under which the taker of the option has the right in accordance with the articles, rules, by-laws or regulations of the relevant Recognised Market, to purchase a fixed quantity of an Authorised Investment from a writer upon lodgement of an exercise notice in accordance with such articles, rules, by-laws or regulations, being a contract which specifies a price and

date (or last date) for delivery in the future, and includes the writing of such an option contract.

**Casual Employee** means a GuildSuper Member who is classified for the time being as a casual employee;

**Debentures** means debentures, debenture stock, bonds, notes and any other documents evidencing or acknowledging indebtedness of an Eligible Corporation (including bills of exchange, promissory notes and certificates of deposit), constituting a charge on property of the Eligible Corporation;

**Eligible Corporation** means a corporation which has shareholders funds of at least ten million Australian dollars (AUD\$10,000,000) as disclosed in the most recent audited consolidated financial statements of the corporation and which is a Banking Corporation or a subsidiary of a Banking Corporation;

**Futures Contracts** means contracts (including, without limitation, the granting of options by the Fund to enter into contracts) in respect of interest rates, currencies, stock or share price indices or any other type of contract prescribed by the Trustee, all of which are traded on any Recognised Market and includes, without limiting the foregoing, a "futures contract" as referred to in the Corporations Act;

**GuildSuper Member** means a Member who is nominated as being subject to the GuildSuper Plan;

**Insured Benefit** means an amount or amounts payable by the insurer in respect of a GuildSuper Member's death, Total and Permanent Disablement or Temporary and Total Disablement;

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

- (a) the Government of the Commonwealth of Australia or any State or Territory of Australia or by any statutory body constituted by, under or pursuant to any act of the Parliament of the Commonwealth of Australia or any legislation of a State or Territory of Australia; or
- (b) any government of an authorised country or any state, territory or other legal subdivision of such a country or by any body constituted by, under or pursuant to any legislation of such government, state, territory or other legal subdivision of that country;

**Put Option** means a put option contract regularly traded on a Recognised Market under which a taker has the right, in accordance with the articles, rules, by-laws or regulations of the relevant Recognised Market, to require a writer to purchase a fixed quantity of an Authorised Investment from him on lodgement of an exercise notice in accordance with such articles, rules, by-laws or regulations, being a contract which specifies a price and date (or last date) for delivery in the future and includes the writing of such an option contract;

**Recognised Market** means any market in Australia which brings buyers and sellers of Authorised Investments together for the purposes of buying and selling those Authorised Investments including without limitation any stock exchange, options market or futures market or other market in which bargains are made on a trading floor or by direct contact between buyer and seller (or their respective agents) or a market which is made by means of listing (by electronic or other means) prices at which persons are willing to buy or sell Authorised Investments provided that such market is situated in Australia and operates in compliance with the laws thereof provided, however, that where an Authorised Investment

is traded on more than one Recognised Market, "Recognised Market" in relation to that Authorised Investment means the Recognised Market nominated by the Trustee;

**Rules** means these rules;

**Temporary and Total Disablement** means in relation to a GuildSuper Member, disablement due to an illness or injury as a result of which:

- (a) the GuildSuper Member has been absent from their employment for an uninterrupted period of at least 90 days; and
- (b) the GuildSuper Member is, in the opinion of the Trustee after consideration of medical evidence satisfactory to it, incapacitated to such an extent as to render the GuildSuper Member incapable of following the GuildSuper Member's normal occupation,

and **Temporarily and Totally Disabled** will have a corresponding meaning PROVIDED THAT if the Trustee pursuant to the Deed has in effect a policy of insurance under which insurance is or may become payable in the event of the disablement of any GuildSuper Member and the circumstances in which the disablement insurance is or would have been payable under any such policy are, in the opinion of the Trustee, similar to the definition set forth above, then the Trustee may determine that the definition of "Temporary and Total Disablement" in the policy will apply in respect of that GuildSuper Member or group of GuildSuper Members;

**Total and Permanent Disablement** means in relation to a GuildSuper Member, disablement due to an illness or injury as a result of which:

- (a) the GuildSuper Member has been absent from their employment for an uninterrupted period of at least six months (or such longer period as the Trustee may determine in any particular case); and
- (b) the GuildSuper Member is, in the opinion of the Trustee after consideration of medical evidence satisfactory to it, incapacitated to such an extent as to render the GuildSuper Member unlikely to ever engage in any work for reward in any occupation or work for which the GuildSuper member is reasonably qualified by education, training or experience,

and **Totally and Permanently Disabled** will have a corresponding meaning PROVIDED THAT if the Trustee pursuant to the Deed has in effect a policy of insurance or assurance under which insurance is or may become payable in the event of the disablement of any GuildSuper Member and the circumstances in which the disablement insurance is or would have been payable under any such policy are, in the opinion of the Trustee, similar to the definition set forth above, then the Trustee may determine that the definition of "Total and Permanent Disablement" in the policy will apply in respect of that GuildSuper Member or group of GuildSuper Members; and

**Trustee Securities** means investments (but excluding real estate and shares) in which trustees are for the time being authorised by the law of any State or Territory of Australia to invest trust funds (including any common fund operated by the Trustee).

### 3. Eligibility to become a GuildSuper Member

- (a) All Members transferring from the GuildSuper division of the Connelly Temple Public Superannuation Fund will become GuildSuper Members.
- (b) Any other person whom the Trustee nominates and approves as a GuildSuper Member will become a GuildSuper Member.



#### 4. Investment Options

- (a) The Trustee will initially offer the following Investment Options as part of the GuildSuper Plan:
- (i) Secure Investment Option;
  - (ii) Conservative Growth Investment Option;
  - (iii) Balanced Growth Investment Option;
  - (iv) Growth Plus Investment Option;
  - (v) Property Securities Investment Option;
  - (vi) High Growth Plus Investment Option;
  - (vii) International Shares (Unhedged) Investment Option; and
  - (viii) Australian Shares Investment Option,
- provided that the Trustee may, in its absolute discretion, add to or remove any of the above Investment Options from time to time.
- (b) Subject to rule 5, the assets of each of the above Investment Options will be invested in accordance with the investment strategy for that Investment Option, as formulated by the Trustee from time to time.

#### 5. Restrictions on Investments

- (a) Notwithstanding clause 10 of this Trust Deed, the Investment Options set out in rule 4(a) shall comprise only of Authorised Investments.
- (b) The Trustee may offer additional Investment Options which include investments that are not Authorised Investments.
- (c) Investments will always be subject to the Relevant Law, and to the in-house assets rules in SIS.
- (d) Investments will always be made on an arm's length basis.

#### 6. Provisions re Futures Contracts, Call Options and Put Options

- (a) The Trustee will ensure that the aggregate of deposits paid and margins called in respect of Futures Contracts outstanding at any time in respect of the Plan, does not exceed five percent (5%) of the Gross Asset Value of the Plan.
- (b) The Trustee shall be entitled to require that the terms of any Futures Contract entered into by it will comply with the terms of any agreement or arrangement from time to time existing between the Trustee and any other party for the purpose of limiting the personal liability of the Trustee in respect of the Plan (but not the liability of the Trustee in its capacity as Trustee of the Plan to the extent that the Trustee's liability is limited to the assets vested in the Trustee or received or to be received by it) in respect of such Futures Contract in a manner which the Trustee reasonably considers to be satisfactory.
- (c) The Trustee will only enter into Futures Contracts or write Put Options or Call Options in respect of the Plan for the purposes of hedging against exposure to loss

in respect of any investment or dealing or proposed dealing with an investment of the Plan.

## **7. Retirement and Resignation Benefit**

Upon a GuildSuper Member ceasing to be a Member when no other benefit is payable under these Rules, a lump sum benefit will be payable to the GuildSuper Member equal to the value of the Member's Account, provided that if a benefit payable must be preserved under the SIS Act, that part of the GuildSuper Member's benefit that must be preserved must be dealt with by the Trustee as it considers appropriate in compliance with the SIS Act.

## **8. Death Benefits**

- (a) Each GuildSuper Member is automatically eligible to receive death only insurance cover.
- (b) On the death of a GuildSuper Member, unless that GuildSuper Member has cancelled their automatic death only cover, a lump sum benefit will be payable to that GuildSuper Member equal to the value of the Member's Account plus an Insured Benefit calculated on the basis of the level of cover selected by that GuildSuper Member or, if no selection has been made by the GuildSuper Member, the level of cover for which they are automatically eligible.

## **9. Total and Permanent Disablement Benefits**

- (a) GuildSuper Members may also apply for additional Death Benefits and Total and Permanent Disablement Benefits and the Trustee's acceptance of such application will be subject to approval by the relevant Insurer.
- (b) Upon a GuildSuper Member who has been approved for Total and Permanent Disablement Benefits ceasing to be an employee as a result of that GuildSuper Member's Total and Permanent Disablement, a lump sum benefit will be payable to that GuildSuper Member equal to the value of the Member's Account plus an Insured Benefit calculated on the basis of the level of cover selected by that GuildSuper Member.

## **10. Temporary and Total Disablement**

- (a) GuildSuper Members may also apply for additional Temporary and Total Permanent Benefits (or salary continuance cover) and the Trustee's acceptance of such application will be subject to approval by the relevant Insurer.
- (b) Upon a GuildSuper Member who has been approved for Temporary and Total Disablement Benefits ceasing to be an employee as a result of that GuildSuper Member's Temporary and Total Disablement, a monthly benefit will be payable to that GuildSuper Member calculated on the basis of the level of cover selected by that GuildSuper Member.

## **11. No Insured Benefit**

No Insured Benefit will be payable by the Trustee to a GuildSuper Member in the event that:

- (a) a GuildSuper Member has no insurance cover because no insurance is available to that specific GuildSuper Member as a condition of the insurance policy; or
- (b) the insurance company rejects a GuildSuper Member's claim for payment of a benefit; or

- (c) the GuildSuper Member has attained the benefit cessation age for the type of cover concerned (age 60 for Death Only and Temporary and Total Disablement cover or age 65 for Death and Total and Permanent Disablement cover).