

**CONSOLIDATED TRUST DEED FOR THE
CLUB PLUS SUPERANNUATION SCHEME**

**INCORPORATING ALL AMENDMENTS
UP TO AND INCLUDING 11 MAY 2017**

Prepared by

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1. Definitions and interpretation

1.1 Definitions

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

Account means any account maintained under this Deed.

20/12/12 **Accrued Default Amount** has the same meaning as given to that term in the SIS.

Auditor means the person appointed under clause 8.2.

Authorised Person means:

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

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

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

Buy Price means the Unit Price that is to be applied to the application or buying of units as determined by the Trustee under clause 8.9.

20/12/12 **Choice Product** has the same meaning given to that term in the SIS.

Deed means the trust deed dated 14 October 1986 and rules (as amended from time to time), anything deemed to be included in the trust deed and rules (as amended) under the Superannuation Law, and any arrangement, agreement, approval, rules or procedures effected pursuant to, or as specifically provided for by, any provision any of them.

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

Director means a director of the Trustee.

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

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

Employer Association means the Registered Clubs Association of New South Wales (otherwise known as Clubs NSW) and includes any other organisation nominated by Clubs NSW which from time to time represents the interests of some or all of the Employers for the purposes of the Fund.

Employer Sponsored Member means a Member whose Employer is a Participating Employer at the relevant time.

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

Fund means the fund continued by this Deed and where relevant includes and refers to a Plan.

Fund Expenses means the costs and expenses of and incidental to the establishment, promotion, operation, management, administration, investment, termination and winding up of the Fund or a Plan (including Tax and insurance costs) and any fees or charges imposed by, or paid by, the Fund or Plan, a Membership Division, Membership Section or Membership Category which the Trustee determines should be Fund Expenses.

Fund Reserve Account means the Account referred to in clause 8.4.

Fund Year means a period of 12 months ending on the 30th June, or such other period ending on such other date as the Trustee from time to time may determine.

Insolvent in respect of a deceased Member's estate means that the Trustee, after being put on notice, has formed the opinion that a significant proportion of the Death Benefit payable on the Member's death would be available to creditors of the deceased Member or the Member's estate if it was paid to the Member's Legal Personal Representative. The Trustee may only form such an opinion if doing so would not cause any of the provisions of this Deed to be void under the *Bankruptcy Act 1966* (Cth) or would not cause the Trustee, or another person, to the Trustee's knowledge, to contravene that Act.

Insured Benefit in respect of a Member means the amount (if any) payable to the Fund by an Insurer on the happening of an event insured under a policy of insurance with the Insurer.

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

Investment Option means an investment strategy in accordance with which a Member is allowed to direct the investment of his or her Member Accounts under clause 6.2(b)(i).

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

Investment Performance Rate means, subject to clause 8.8, the (positive or negative) rate or rates determined by the Trustee in accordance with clause 8.8.

Legal Personal Representative means the person or persons to whom Probate of a deceased Beneficiary's last Will or Letters of Administration of the deceased Beneficiary's estate is or are granted, the trustee of the estate of a person under a legal disability or a person who holds an enduring power or attorney granted by a person, in any State or Territory of the Commonwealth.

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

Member means a person admitted as a member of the Fund under clause 9.1 or under a previous provision of this Deed, for so long as he or she participates in, or is entitled to receive a benefit from, the Fund and includes a deceased person in respect of whom a death benefit is payable in accordance with clause 11.5.

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

Membership Category, Membership Division and Membership Section each has the meaning set out in clause 4.1.

Nominated Non-dependent Beneficiary means a Non-dependent Beneficiary nominated by a Member as the Non-dependent Beneficiary.

Non-dependent Beneficiary in relation to a Member or former Member means:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, cousin, grandchild or great-grandchild of the Member;
- (b) any Spouse of any of the persons specified in paragraph (a);
- (c) any child of any of the persons specified in paragraph (a) or (b); or
- (d) any other natural person selected by the Trustee to whom the Trustee considers it appropriate to pay a benefit in respect of the Member.

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

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

- 25/2/10
- (a) the Spouse or former Spouse of a Member; and
 - (b) a Non-Member Spouse within the meaning of that term under Part VIIIB of the Family Law.

Officeholder means the Trustee or a Director as the context requires.

Participant means a Beneficiary or a Participating Employer.

Participating Employer means an Employer admitted as a Participating Employer under clause 9.1 or under a previous provision of this Deed, for so long as the Employer participates in the Fund.

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

20/12/12

Plan has the meaning set out in clause 4.1.

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

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

Inserted **Prescribed Date** means 1 July 2017 or such other date as may be prescribed in the Superannuation Law for the purpose of the application of Clause 17.

20/12/12

Proper Law means the law of the State of New South Wales.

Inserted **Relevant Date** means 1 July 2013 or such other date as may be prescribed in the SIS for the purpose of the application of Clause 17.
20/12/12

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

Inserted **SGC Act Contributions** means the minimum amount required to be paid by an Employer to the Fund to avoid any tax penalty being imposed on the Employer pursuant to the Superannuation Guarantee (Administration) Act, 1992 (Cth).
20/12/12

Sell Price means the Unit Price that is to be applied to the redemption or selling of Units as determined by the Trustee under clause 8.9.

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

Deleted

25/10/10

Inserted **Spouse** has the meaning given to it by the Superannuation Law
25/10/10

Superannuation Law means:

- (a) SIS;
- (b) the Tax Act;
- (c) the Family Law;
- (d) the *Corporations Act 2001* (Cth);
- (e) the *Bankruptcy Act 1966* (Cth);
- (f) the *Anti-Money Laundering and Counter-Terrorist Financing Act 2006* (Cth);
- (g) any replacement or additional Commonwealth or State law; and
- (h) any other present, future or proposed legal requirements with which the Trustee:
 - (i) is legally obliged to comply; or
 - (ii) must comply to obtain the maximum Tax concessions available to the Fund.

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

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

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

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

- (a) an Insured Benefit – has the meaning of the term **Total and Permanent Disablement** (or such other corresponding term) in the policy document evidencing the contract of insurance; or
- (b) not an Insured Benefit – has the meaning of the term **permanent incapacity** in the Superannuation Law.

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

Union means the Liquor, Hospitality and Miscellaneous Union, Liquor and Hospitality Division, New South Wales Branch (**LHMU**) and includes any other trade union or other organisation nominated by the LHMU which from time to time represents the interests of some or all of the Members for the purposes of the Fund.

Unit means a part or share of the Investment Option Portfolio determined in accordance with clause 8.9.

Unit Price means the applicable price of a Unit as determined by the Trustee under clause 8.9.

1.2 Interpretation

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

- (a) **Defined terms:** the expression: approved deposit fund, condition of release, constitution, constitutional corporation, employer representative, financial services, flag lifting agreement, independent director, member representative, minimum benefits, non-member spouse, payment flag, payment split, preserved benefits, public offer superannuation fund, Regulator, restricted non preserved benefit, superannuation agreement, terminal medical condition, unrestricted non preserved benefits and any other words or expression used in this Deed which is defined in the Superannuation Law has the same meaning in this Deed as in the Superannuation Law.
- (b) **Amended provisions:** a reference to a document (including this Deed) includes a change or supplement to, or replacement or novation of that document.
- (c) **Deed binding:** the provisions of this Deed as well as all approvals and acts under this Deed are binding on all Participants and form the sole agreement between the Trustee and the Participant in relation to the matters dealt with by this Deed.
- (d) **Rules of interpretation:** the rules of interpretation set out in sections 6, 7, 8 and 9 of the *Interpretation Act 1987* (NSW) apply to this Deed (except that any reference to that Act in those sections is to be taken as a reference to this Deed) and without limitation:

- (i) a reference to a person includes a body corporate, partnership, joint venture or association; and
 - (ii) a reference to the singular includes the plural and vice versa.
- (e) **Statutory enactments:** a reference to any statute or other law includes any regulations, modification orders, declarations, enforceable determinations, class orders, rulings and any other instruments issued under it and any consolidations, amendments, re-enactments or replacements of any of them.
- (f) **Headings:** headings and table of contents are for convenience only and do not affect the interpretation of this Deed.
- (g) **Inclusions:** the use of the word **including** in a provision as an introduction to a list of things does not limit that provision to that list or to things of a similar nature.
- (h) **Positive and negative investment performance rate:** a reference to investment performance or any rate of investment performance (howsoever described) includes a reference to positive or negative investment performance or rate of investment performance.
- (i) **Exercise of Powers:** Subject to any provision of this Deed to the contrary, whenever a Power is conferred on the Trustee, the Employer, a delegate of the Trustee or any other person under this Deed:
- (i) the relevant provision of this Deed shall be read as if the words **at any time or from time to time** were added to that provision; and
 - (ii) the Trustee, the Employer, the delegate of the Trustee or the other person has an absolute and uncontrolled discretion and may, from time to time:
 - (A) exercise and enforce all or any such Powers; or
 - (B) refrain from exercising or otherwise not exercise all or any such Powers.

2. Paramount provisions: compliance with the Superannuation Law

2.1 Paramount provisions

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

2.2 Compliance

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

2.3 Deemed compliance

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

- (a) is satisfied that the Trustee has complied with the Superannuation Law;
- (b) determines that the Fund will be treated as if it had complied with the Superannuation Law; or

- (c) has advised the Trustee that it will not take action against the Trustee or the Fund in respect of a failure to comply with the Superannuation Law.

2.4 Conflict with the Superannuation Law

- (a) To the extent that any provision, or part of a provision, of this Deed conflicts with the Superannuation Law or is invalid for any other reason whatsoever:
 - (i) that provision, or part, must be read down, changed, construed or severed to avoid such conflict or invalidity; and
 - (ii) to the extent that such conflict or invalidity cannot be avoided, the requirement of the Superannuation Law shall prevail to the extent of the conflict or invalidity only and the provision, or part, will be of no effect and will not affect the remainder of this Deed.
- (b) If a provision of this Deed would otherwise be void under the Superannuation Law because it:
 - (i) subjects the Trustee to direction by another person; or
 - (ii) permits a person to exercise a discretion without the consent of the Trustee,

other than in the circumstances permitted by the Superannuation Law, the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

2.5 Power to comply with the Family Law

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

- (iv) preserve a Non-Member Spouse's entitlements; and
 - (v) charge a Member or a former Member and deduct from benefits or entitlements in, or payable from the Fund, fees in respect of any matter or thing done under this clause, an application for information about a Member's interest in the Fund or any other thing done pursuant to Part VIII B of the Family Law.
- (b) The Trustee must treat the Non-Member Spouse as a Member where required by the Superannuation Law.

2.6 Power to comply with the Superannuation Law

- (a) The Trustee may:
- (i) do anything whatsoever that the Trustee is required to do, or that the Trustee considers necessary, expedient or desirable to comply with any requirement of the Superannuation Law (including expending monies of the Fund for the purposes of doing so); and
 - (ii) refrain from doing anything whatsoever that would result in the Trustee breaching a requirement of the Superannuation Law.
- (b) The Trustee may rely on anything (including any statutory presumptions available to it) in the Superannuation Law, to the extent that the Trustee is entitled to do so in its capacity as trustee of the Fund.
- (c) The Trustee is entitled to be indemnified out of the assets of the Fund for any Liabilities that the Trustee properly incurs pursuant to this clause.

3. Changes to Deed

3.1 Amendments to the Deed

The provisions of this Deed including this clause may be added to, amended, altered, modified, varied, replaced or deleted (each an **Amendment**) with immediate, prospective or, to such extent as the law allows, retrospective effect from time to time by the Trustee by deed executed by the Trustee provided that no Amendment shall be made:

- (a) which is not permitted by Superannuation Law; or
- (b) which imposes a further obligation on an Employer or a Member to contribute to the Fund or detrimentally affects any of the rights of an Employer, unless the Employer or Member (as the case may be) has consented to the Amendment; or
- (c) which authorises the making of any payment to an Employer of the Fund.

3.2 Deemed Consent

For the purposes of clause 3.1(b):

- (a) if the Trustee notifies a Member or an Employer of an Amendment by notice in writing either before, or within 31 days after the date of the Amendment and the Member or Employer does not notify the Trustee in writing that the Member or Employer does not consent to the Amendment, the Member or the Employer is deemed to have consented to the Amendment on the date of the relevant Amendment.

- (b) Notwithstanding paragraph (a), if the Trustee notifies all Members of an Amendment by notice in writing either before, or within 31 days after, the date of the Amendment and less than 10% of the Members notify the Trustee in writing of their objection to that Amendment within 90 days of that notice being given to them, each and every Member is deemed to have consented to the Amendment on the date of the relevant Amendment.

4. Plans

4.1 Establishment of Plans

- (a) The Trustee may establish one or more plans (each a **Plan**) and any division (**Membership Division**), section (**Membership Section**) or category (**Membership Category**) within that Plan, on such terms and conditions as it determines.
- (b) The Trustee may make rules governing a Plan, Membership Division, Membership Section and/or Membership Category and those rules must be set out in a Schedule to this Deed.
- (c) For the avoidance of doubt, a Member may belong to more than one Plan, Membership Division, Membership Section or Membership Category at one time.

4.2 Operation of Plans

- (a) Unless the Trustee otherwise determines, any Liability which, in the Trustee's opinion:
 - (i) relates to a Plan must not be satisfied from the assets, or the benefits, relating to Participants in any other Plan; and
 - (ii) relates to one Membership Division, Membership Section or Membership Category must not, be satisfied from the assets, or the benefits, relating to Participants in any other Membership Division, Membership Section or Membership Category.
- (b) The provisions of this Deed which are not included in a Schedule relating to a Plan, Membership Division, Membership Section and/or Membership Category will govern the Plan, Membership Division, Membership Section and/or Membership Category to the extent they are applicable.
- (c) If there is a conflict between a rule governing a Plan, Membership Division, Membership Section and/or Membership Category and any other provision of this Deed which is not included in the Schedule relating to the Plan, Membership Division, Membership Section and/or Membership Category, the former prevails over the latter, unless the Schedule expressly provides to the contrary or the Trustee determines otherwise.
- (d) For avoidance of doubt, nothing in this clause 4 shall be taken as creating a separate trust or fund for the purposes of the Superannuation Law.

5. Trustee

5.1 Trustee must be a constitutional corporation

There shall only be one Trustee and the Trustee must be a constitutional corporation.

5.2 Retirement of Trustee

The Trustee:

- (a) must immediately retire by written notice to each Employer if the Trustee becomes a disqualified person for the purposes of Superannuation Law; and
- (b) may, at any time, retire by giving 60 days' (or such shorter period to which the Employers may agree) written notice to each Employer;

and in either case:

- (c) the Trustee must, by deed, appoint another constitutional corporation to act as Trustee in its place; and
- (d) any such retirement of the Trustee does not take effect until the Trustee has appointed another constitutional corporation to act as Trustee in its place.

5.3 Constitution

The Trustee shall at all times ensure that its constitution is consistent with any applicable requirements of Superannuation Law.

5.4 Continuity of Office

Upon ceasing to hold the office of Trustee, the Trustee must, at the expense of the Fund, do everything necessary to vest the Fund in the new or replacement trustee or its nominee, including:

- (a) transferring all of the assets of the Fund; and
- (b) delivering all records, title documents, accounts, registers and other documents relating to the Fund,

to the new or replacement trustee or its nominee.

5.5 The Trustee's Powers

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

- (a) **Appointments:** appoint advisers, agents, custodians, secretaries, administrators or investment managers, delegates, employees, contractors and any other persons to perform any duties and exercise any Powers that the Trustee is empowered to carry out under this Deed, including Powers to:
 - (i) receive and expend monies of the Fund;
 - (ii) advise Participants and prospective Participants in relation to the Fund;
 - (iii) receive or process applications to participate in the Fund;
 - (iv) perform financial services on behalf of the Trustee;
 - (v) deal with insurance policies; and
 - (vi) keep accounts,

on such terms (including terms as to remuneration) as the Trustee determines.

- (b) **Bank accounts:** open, deposit into and regulate the operation of bank accounts.
- (c) **Benefits:** without limiting clause 5.5(m), conclusively calculate and determine the amount of benefits, the identity of persons entitled to such benefits and the manner in which the benefits are to be paid (including the payment of benefits by way of pension or annuity), and may delay payment of benefits until assets of the Fund can reasonably be disposed of.
- (d) **Borrowing:** borrow, if permitted by the Superannuation Law.
- (e) **Delegation:** to delegate (by power of attorney or otherwise) to any person or company any of the Powers vested in the Trustee on such terms and conditions as the Trustee determines. The Trustee may revoke such delegation and may exercise its Powers concurrently, permanently or temporarily to the exclusions of the exercise of the Powers by the delegate. A Member may be a delegate of the Trustee and may exercise any power vested in the Member in that position without prejudice to the Member's rights as a Member of the Fund. The Trustee will not be responsible for any Liability incurred as a result of such delegation.
- (f) **Determinations:** determine questions of fact, disputes and issues concerning the Fund conclusively and act on such proofs or presumptions as it may consider satisfactory whether or not the same be strict legal proofs or presumptions and any determination or discretion made by the Trustee can be made, subject to clause 2, in its absolute and uncontrolled discretion.
- (g) **Fund Expenses:** to be indemnified for, to make provision for, to be reimbursed for, and to determine the allocation and attribution of, Fund Expenses.
- (h) **Indemnities and undertakings:** give a guarantee, indemnity or undertaking and assume such liabilities (each an **obligation**) in connection with the Fund as it determines in its absolute discretion (including the obligations of the trustee of another Benefit Arrangement from which the Trustee has accepted Members into the Fund).
- (i) **Insurance:** may:
 - (i) at the expense of the Fund effect (or accept the assignment of) a policy of insurance or in respect of any risk or Liability whatsoever of the Fund, on such terms and conditions and for such periods as the Trustee, in its absolute discretion, determines;
 - (ii) pay from the assets of the Fund premiums for such insurance; and
 - (iii) deal with that policy in any manner which the Trustee considers suitable as if it were the sole and absolute legal and beneficial owner of that policy including agreeing with the insurer that the policy or contract to be varied or modified from time to time.
- (j) **Legal proceedings:** commence, conduct, discontinue, prosecute, defend, settle, compromise, refer to arbitration or abandon any claim, demand or proceedings by or against the Fund or the Trustee or otherwise concerning the Fund or this Deed and compound or allow time for payment or satisfaction of a debt due to the Fund or the Trustee or of a claim or demand by or against the Fund or the Trustee or pay or charge interest in respect of any amount involved in any such proceedings.

- (k) **Marketing and promotion:** to market and promote the Fund to Participants and prospective Participants (including, expending monies to do so).
- (l) **Old-age pensions:** determine that the sole or primary purpose of the Fund is the provision of the old-age pensions.
- (m) **Orders:** to act on a direction or order of a Court or the Regulator or the Superannuation Complaints Tribunal, established under the *Superannuation (Resolution of Complaints) Act 1993* (Cth).
- (n) **Provisions:** set aside any amounts from the Fund as a provision against any Fund Expense or other outgoing contemplated by or which may be made under this Deed and amounts against which the Trustee reasonably believes it is indemnified.
- (o) **Public offer superannuation fund:** accept and retain Members which may cause the Fund to become a Public Offer Superannuation Fund and / or elect that the Fund be treated as a Public Officer Fund and enter into such contracts and arrangements with other parties (including custodians, administration managers and banks) and expend such monies of the Fund as the Trustee determines for the purposes of becoming an "approved trustee" (within the meaning of that expression in the Superannuation Law).
- (p) **Receipts, releases and discharges:** give receipts, releases and other discharges for monies payable to the Fund or the Trustee and claims and demands of, or against, the Fund or the Trustee.
- (q) **Rules and procedures:** make rules and adopt procedures in relation to the Fund, including:
 - (i) the calculation and rounding-off of contributions, benefits and any rate of investment performance;
 - (ii) the calculation of an Investment Performance Rate;
 - (iii) the establishment of a reserving strategy for the purpose of stabilising Investment Performance Rates in respect of a Plan, Membership Division, Membership Section, Membership Category or class or group of Members;
 - (iv) the determination of the minimum amounts that can be accepted or retained in the Fund;
 - (v) which persons can sign documents in connection with the Fund;
 - (vi) the establishment and operation of policy committees;
 - (vii) the establishment and operation of arbitration and dispute resolution procedures;
 - (viii) the determination of periods of time;
 - (ix) unitisation of the Fund; and
 - (x) any other matters which the Trustee considers appropriate for the convenient administration of the Fund.
- (r) **Tax:** do anything it considers appropriate in respect of any Tax, including:

- (i) reducing or adjusting any benefit or amount for any actual or contingent Liability for Tax before paying the benefit or amount;
- (ii) establishing reserves or making provisions for any future or contingent Liability for Tax; or
- (iii) transferring, or making any other arrangements whereby another party pays or provides for, all or part of the Tax Liability of the Fund,

in such manner as it considers appropriate.

- (s) **Trustee's incidental Power:** do anything necessary or incidental to the exercise of any Power by the Trustee.

5.6 Payments to Trustee and Directors

- (a) The Trustee must not receive remuneration from the Fund in respect of its services as Trustee unless otherwise agreed in writing between the Employer Association and the Union.
- (b) Where an individual performs professional or other services (**work**) for the Fund, the Trustee may:
 - (i) if the work is done in the person's personal capacity - pay the person; or
 - (ii) if the work is done in the person's capacity as a partner or employee of a firm, corporation, partnership or other organisation - pay the firm, corporation, partnership or other organisation,

from the Fund the reasonable fees of that person or firm, corporation, partnership or other organisation (as the case may be) for the work so performed.
- (c) For the avoidance of doubt, notwithstanding paragraph (a), the Trustee may pay fees to a firm or organisation under subparagraph (b)(ii) even if the Trustee or any Director is a partner, director, shareholder, related body corporate (as defined in the *Corporations Act 2001* (Cth)) or employee of the firm or organisation to which the fee is paid.

5.7 Indemnity of Trustee and Directors

- (a) The Trustee and each of its Directors is indemnified out of the Fund against all Liabilities (excluding any Liability for a monetary penalty under a civil penalty order imposed under the Superannuation Law) and Fund Expenses incurred in the exercise or purported exercise or attempted exercise of the trusts powers authorities and discretions vested in the Trustee or at law and shall have a lien on and may use the moneys forming part of the Fund for the purposes of this indemnity and generally for the payment of all Liabilities and Fund Expenses and otherwise of performing their duties under the Deed.
- (b) The indemnity set out in paragraph (a) shall extend to any payments made to any person whom the Trustee bona fide believes to be entitled thereto although it may subsequently be found that the person was not in fact so entitled but shall not be available to any person if the person failed to act honestly or intentionally or recklessly failed to exercise the degree of care and diligence that the person was required to exercise.
- (c) In this clause, the word 'Trustee' includes any former Trustee.

5.8 Liability of Trustee or Directors

An Officeholder is not liable for any Liability or breach of trust whatsoever other than:

- (a) Liability attributable to the Officeholder, in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the Officeholder was required to exercise; or
- (b) Liability for a monetary penalty under a civil penalty order made against the Officeholder under the Superannuation Law.

5.9 Reliance on opinions, advice or information

The Trustee and each Authorised Person:

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

5.10 Action notwithstanding interest

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

5.11 Trustee and Director vacancies and procedure

The provisions regarding:

- (a) the circumstances in which an Officeholder's office becomes vacant; and
- (b) the procedure for the appointment and removal of an Officeholder,

are as specified in the constitution of the Trustee and to the extent that such circumstances and procedures are not so specified, are as provided for under this Deed.

6. Investments of Fund

6.1 Authorised investments

- (a) The Trustee may make any investment or deal with or deploy the assets of the Fund in any manner which the Trustee considers suitable as if it was the sole and absolute legal and beneficial owner of those assets, including:
 - (i) **loans:** make a loan if permitted by the Superannuation Law;
 - (ii) **futures, hedging and synthetics:** participate in, in any capacity, any synthetic investment, including a futures contract, hedge contract, swap contract or option contract, whether or not related to any other property forming part of the Fund;
 - (iii) **securities lending arrangements:** subject to the Superannuation Law, entering into any securities lending arrangement or facility for lending securities of the Fund;

- (iv) **lease, mortgage, etc:** lease, mortgage, charge, license or otherwise deal in any way with any property of the Fund;
 - (v) **mix property:** mix property of the Fund with any other property, other than where prohibited by the Superannuation Law, provided the Trustee must at all times maintain separate records to enable identification of the property of the Fund; and
 - (vi) **no income:** in any property which does not produce income or which is speculative.
- (b) If the Fund is invested wholly in a policy with an Insurer, the Insurer's records and accounts of the interests of Beneficiaries in respect of the policy may record and represent the interests of those Beneficiaries in the Fund.

6.2 Member Investment Choice

- (a) The Trustee may, where permitted by the Superannuation Law, hold specific investments for separate Plans, Membership Divisions, Membership Sections, Membership Categories or classes or groups of Members.
- (b) Where permitted by the Superannuation Law, the Trustee may (but is not obliged to):
 - (i) establish one or more investment objectives and strategies (including an investment in a specified asset) (each called an **Investment Option**); and
 - (ii) allow a Member of a Plan, Membership Division, Membership Section, Membership Category or class or group of Members or an individual Member to direct the Trustee, or vary such a direction, to invest one or more of the Member's Accounts in accordance with an Investment Option or Investment Options and, if there is more than one Investment Option, the proportion of the Member's Accounts that are to be invested in accordance with each Investment Option (such direction called a **Member Investment Choice**).
- (c) In respect of a Member Investment Choice, the Trustee may:
 - (i) in its absolute discretion, defer carrying out, or staggering, a Member Investment Choice to withdraw or switch from an Investment Option for any reason;
 - (ii) prior to carrying out the Member Investment Choice, seek evidence of the Member's consent to the direction;
 - (iii) impose terms, conditions or restrictions on the manner in which a Member Investment Choice may be made, including in relation to:
 - (A) the minimum amount that may be invested in an Investment Option;
 - (B) the time or times, and the frequency in relation to which a Member Investment Choice may be made; and
 - (C) the fees that can be charged in relation to such a Member Investment Choice (including a fee for switching between Investment Options);

- (iv) at any time vary any term, condition or restriction without the approval of the Member, subject to the Superannuation Law; and
 - (v) if a Member who is allowed a Member Investment Choice fails to exercise his or her Member Investment Choice within the time or manner specified by the Trustee, determine the default Investment Option or Investment Options into which the Member's Accounts are to be invested and, if there is more than one Investment Option, the proportion of the Member's Accounts that are to be invested in each Investment Option.
- (d) Subject to clause 6.2(c), the Trustee shall be bound to act in accordance with a Member Investment Choice.
 - (e) An investment by the Trustee to give effect to a Member Investment Choice is made for the sole benefit of and at the sole risk of the Member or the Members of the class or group such that any income or gains or losses or expenses incurred in respect of an Investment Option must be attributed to that Member or the Members of the class or group.
 - (f) Notwithstanding clause 6.2(e), a Beneficiary has no right or any interest in, and cannot exercise any right in any particular asset of the Fund.
 - (g) The Trustee is not liable for the acquisition, delay in acquiring, retention, failure to dispose of, the performance of, or for any Liability attributable to, an Investment Option.

6.3 Investment Option Portfolios

- (a) The Trustee may from time to time:
 - (i) establish and maintain one or more notional portfolios of assets and liabilities in relation to each Investment Option;
 - (ii) notionally allocate the assets and liabilities of the Fund (including any actual or contingent losses and expenses (including any Fund Expenses and Tax) which are not debited to a Beneficiary's Account) to each Investment Option Portfolio; and
 - (iii) combine, split, close, rename and restructure the Investment Option Portfolios in such manner as the Trustee determines.

For avoidance of doubt, nothing in this clause shall be taken as creating a separate trust or fund for the purpose of the Superannuation Law.
- (b) The Trustee may, in anticipation that Units in an Investment Option Portfolio will need to be redeemed in accordance with clause 8.9(c)(i)(B), realise or apply any investments of that Investment Option Portfolio at any time that it deems expedient.
- (c) The Trustee must determine the value of each Investment Option Portfolio from time to time (and at least annually) having regard to:
 - (i) investment performance (including income and realised and unrealised capital gains) and losses on the assets of the Investment Option Portfolio net of losses and expenses;

- (ii) the value of the assets and liabilities (including unrealised liabilities) of the Investment Option Portfolio;
 - (iii) any averaging of investment performance or any reserving of returns, losses or expenses;
 - (iv) any provision that in the opinion of the Trustee should be made; and
 - (v) other relevant matters that the Trustee in its absolute discretion determine is appropriate.
- (d) In the exercise of its Powers under clause 6.3(c), the Trustee may adopt whatever assumptions, methodology and procedures the Trustee, in its absolute discretion, considers appropriate, including:
- (i) methodology and procedures concerning the method and basis of valuing particular property or the net income of an Investment Option Portfolio;
 - (ii) the intervals at which valuations must be carried out; and
 - (iii) the reserving of returns, losses or expenses or the averaging of the investment performance of an Investment Option Portfolio.

6.4 Insurance

- (a) The Trustee may, in its absolute discretion:
- (i) effect or maintain one or more policies issued by an Insurer or Insurers at the expense of the Fund on such terms and conditions and for such periods as the Trustee thinks fit;
 - (ii) deal with those policies in any manner which the Trustee considers suitable as if it were the sole and absolute legal and beneficial owner of those policies;
 - (iii) agree from time to time with the Insurer that the policy or contract to be varied or modified; and
 - (iv) accept the assignment of a policy of insurance on such terms as the Trustee, in its absolute discretion, determines.
- (b) Notwithstanding clause 6.4(a), the Trustee has no duty to effect, increase or maintain any insurance cover.
- (c) The Trustee may, subject to the Insurer's acceptance, allow a Member or the Members in a class or group of Members to elect and subsequently change (each called an **election**):
- (i) the amount of the Insured Benefit payable under a policy of insurance; or
 - (ii) the number of units representing an Insured Benefit that are to be held by the Trustee,
- in respect of a Member in the event of the Member's death or disablement.
- (d) The Trustee may, in its absolute discretion:
- (i) decline to give effect to a Member's election under clause 6.3(c);

- (ii) prior to carrying out a Member's election, seek evidence of the Member's consent to the election;
- (iii) impose and vary (without the approval of the Member) any terms, conditions or restrictions on the manner in which an election may be made, including:
 - (A) the times and the frequency in relation to which an election may be made; and
 - (B) the fees that can be charged in relation to the making of an election; and
- (iv) determine the amount of the Insured Benefit, or the number of units that are to be held by the Trustee, if a Member who is allowed to make an election fails to do so within the time or manner specified by the Trustee.
- (e) The Trustee may, in its absolute discretion, hold for a particular Member or a class or group of Member, a policy of insurance insuring the Temporary Disablement of the Member or a Member in that class or group.
- (f) The amount of an Insured Benefit and the payment of an Insured Benefit to a Member from the Fund is subject to:
 - (i) the Trustee being able to insure for the desired amount and for the events giving rise to payment of that amount on standard terms; and
 - (ii) the Member providing the Trustee with all relevant information required by the Insurer and, if required, submitting to any medical examination required by the Trustee or the Insurer from time to time.
- (g) If a Member's date of birth is incorrectly stated or if other information supplied to the Trustee or the Insurer is incorrect or incomplete, the Trustee may adjust the Insured Benefit payable to a Member from the Fund on such basis as the Trustee considers equitable.
- (h) Without limitation to clause 11.3, if, for any reason:
 - (i) the Trustee is unable to insure any benefit payable under this Deed for the desired amount or for the events giving rise to payment of that amount on standard terms;
 - (ii) the Trustee fails to insure any benefit payable under this Deed, or, the Insurer (with which the Trustee seeks to insure all or any of the benefits payable under this Deed) declines to accept the proposal for insurance or will only accept the proposal on terms and conditions which the Trustee regards as unacceptable; or
 - (iii) the Insurer (with which all or any part of the benefits payable under this Deed are insured) fails or refuses to pay, or reduces, delays or defers payment of, any part of the Insured Benefit,

the amount of any Insured Benefit payable from the Fund may be reduced accordingly.

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

7. Segregation of Assets

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

8. Accounts and records

8.1 Accounts and records

The Trustee must:

- (a) keep records and financial accounts of the Fund; and
- (b) prepare such financial statements,

as required by the Superannuation Law.

8.2 Auditor

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

8.3 Accounts

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

- (a) record the benefits of the Members;
- (b) provide for any Fund Expenses;
- (c) record, and offset against a Member's benefits or Accounts, any actual or contingent Liability for Tax which the Trustee determines is attributable to the Member; and
- (d) record any reserves maintained by the Fund.

8.4 Fund Reserve Account

- (a) Without limiting the generality of clause 8.3, the Trustee may establish a Fund Reserve Account.
- (b) The Trustee may credit the Fund Reserve Account with:

- (i) amounts which the Trustee determines from time to time to set aside from the contributions to, or the earnings of, the Fund;
 - (ii) any positive amounts at the Investment Performance Rate or Investment Performance Rates, and any other positive amounts, attributable to the investment of the Fund Reserve Account;
 - (iii) provisions for Tax; and
 - (iv) amounts which the Trustee determines from time to time to transfer to the Fund Reserve Account from other Accounts in the Fund.
- (c) The Trustee may debit the Fund Reserve Account for:
- (i) paying any Tax, Fund Expenses or contingencies of the Fund;
 - (ii) any amounts which the Trustee determines from time to time to transfer to Members' Accounts;
 - (iii) any amounts which the Trustee determines from time to time to transfer to one or more reserve or provision accounts or any other accounts established and maintained by the Trustee for the purposes of the Fund;
 - (iv) any negative amounts at the Investment Performance Rate or Investment Performance Rates, and any other negative amounts, attributable to the investment of the Fund Reserve Account; and
 - (v) any other amounts which the Trustee determines from time to time to debit the Fund Reserve Account.

8.5 Costs and expenses

Except as otherwise expressly provided in this Deed:

- (a) all Fund Expenses shall be borne by the Fund and paid by the Trustee and the Trustee may debit the Members' Member Accounts, the Fund Reserve Account and the Investment Option Portfolio of the Fund in such manner as it shall consider appropriate to reflect the payment of or the making of any provision for any such Fund Expenses; and
- (b) the Trustee may indemnify an Employer in respect of any costs charges or expenses which are properly incurred by an Employer.

The Trustee may, however, accept contributions in respect of such costs charges or expenses from an Employer or may arrange for such costs charges or expenses to be paid and borne by an Employer in such manner and in such proportions as is agreed between the Trustee and the Employer.

8.6 Investment Fluctuation Account

- (a) The Trustee may establish an Investment Fluctuation Account and utilise it as a mechanism for smoothing any fluctuations in the value of each Investment Option Portfolio or in the Investment Performance Rate.
- (b) If at any time the Trustee considers that the amount standing to the credit of the Investment Fluctuation Account exceeds such amount as is likely to ever be required for the purposes described in paragraph (a), the Trustee may debit such excess amount from the Investment Fluctuation Account and credit Member's

Accounts and the Fund Reserve Account with such proportions of the excess amount as the Trustee may decide.

8.7 Other Accounts

- (a) The Trustee may credit an Account with:
 - (i) any portion of the Fund's assets which the Trustee determines;
 - (ii) any positive amounts at the Investment Performance Rate or Investment Performance Rates, and any other positive amounts, attributable to the investment of the Account; and
 - (iii) any other amounts which the Trustee determines from time to time to allocate to the Accounts.
- (b) The Trustee may debit an Account for:
 - (i) any proportion of the premiums and costs in respect of any insurance policy or policies maintained in respect of Members which the Trustee determines;
 - (ii) any Fund Expenses which the Trustee determines from time to time;
 - (iii) any actual or contingent Liability for Tax which the Trustee determines is attributable to a Member and which the Trustee determines to offset against the Account;
 - (iv) any amounts which the Trustee determines from time to time to transfer to the Fund Reserve Account to provide and pay for any Tax or Fund Expenses and any other contingencies of the Fund;
 - (v) any amounts which the Trustee determines from time to time to transfer to one or more reserve or provision Accounts or any other Accounts maintained by the Trustee for the purposes of the Fund;
 - (vi) any negative amounts at the Investment Performance Rate or Investment Performance Rates, and any other negative amounts, attributable to the investment of the Account; and
 - (vii) any other amounts which the Trustee determines from time to time to debit the Accounts.
- (c) On the winding up of the Fund, any amounts recorded in Accounts maintained for the purposes set out in clauses 8.3(b), 8.3(d) and 8.4 must be credited to the Accounts of Members in proportion to the amounts standing to the credit of those Members' Accounts at the time, or on such other basis as the Trustee considers equitable.

8.8 Investment Performance Rate, Interim Investment Performance Rates and Adjustments

- (a) Subject to rules 6.2(e) and 8.9, the Trustee must declare one or more (positive or negative) Investment Performance Rates from time to time (and at least annually) in respect of each Investment Option Portfolio, or if there is no Investment Option Portfolio, the Fund.

- (b) The Trustee may, at such times and in such manner as the Trustee considers appropriate, declare:
 - (i) one or more interim (positive or negative) Investment Performance Rates from time to time to be applied either prospectively or retrospectively in any period for which the Trustee has not declared an Investment Performance Rate; or
 - (ii) an adjustment to any declared Investment Performance Rate to be applied retrospectively in relation to any period for which it has declared a Investment Performance Rate if permitted by the Superannuation Law.
- (c) In the exercise of its Powers under this clause 8.8, the Trustee
 - (i) must have regard to the investment performance of, and the value of the assets of, the Investment Option Portfolio or the Fund (as the case may be) (including income and realised and unrealised capital gains and losses) and liabilities (including unrealised liabilities and any actual or contingent Fund Expenses which are not debited to Members' Accounts) and other relevant matters, as are appropriate in the opinion of the Trustee; and
 - (ii) may otherwise adopt whatever assumptions, methodology and procedures the Trustee, in its absolute discretion, considers appropriate, including:
 - (A) methodology and procedures concerning the method and basis of valuing particular property;
 - (B) the intervals at which valuations must be carried out; and
 - (C) the reserving or averaging of investment performance.
- (d) The Trustee must, as soon as reasonably practicable after the review date, credit (if the Investment Performance Rate is positive) or debit (if the Investment Performance Rate is negative) the Member Accounts in respect of all Members and the Fund Reserve Account with investment returns, at the Investment Performance Rate, on such basis as the Trustee considers equitable having regard to the balances of those accounts during the Fund Year and the requirements of Superannuation Law.

8.9 Unitisation

- (a) The Trustee may divide each Investment Option Portfolio into Units.
- (b) The Trustee may adopt rules from time to time in relation to:
 - (i) whether parts of Units may be issued in a particular Investment Option Portfolio and, if so, the number of decimal places to which part Units may be issued;
 - (ii) the means by which actual or anticipated transaction costs in relation to the acquisition or disposal of the underlying assets in an Investment Option Portfolio are recovered;
 - (iii) switching between the Units of one Investment Option Portfolio and another;

- (iv) the method, timing and frequency of valuing and determining the Buy Price and Sell Price of Units in each Investment Option Portfolio;
 - (v) the calculation of any differential between the Buy Price and the Sell Price (if any) (**Buy/Sell differential**); and
 - (vi) any other matter which the Trustee determines to be necessary or appropriate for administering the Fund as a unitised fund.
- (c) If and to the extent that the Trustee administers the Fund's investments on a unitised basis the following shall apply:
- (i) The Trustee may:
 - (A) credit any amount in respect of a Beneficiary by allocating an appropriate number of Units to that Beneficiary's Account in the Fund in the relevant Investment Option Portfolio or Investment Option Portfolios in which the amount is to be invested, at the relevant Buy Price of those Units at that time; and
 - (B) debit any amounts (including Fund Expenses and Tax) in respect of a Beneficiary by redeeming an appropriate number of Units from that Beneficiary's Account in the Fund in the relevant Investment Option Portfolio or Investment Option Portfolios in which the amount is invested, at the relevant Sell Price of those Units at that time.
 - (ii) Where the Superannuation Law requires it, or the Trustee does not believe that the Buy Price or the Sell Price is fair and reasonable, or can be calculated, the Trustee may apply such alternative Buy Price or Sell Price as the Trustee determines.
 - (iii) Where this Deed refers to the balance, or the amount standing to the credit, of an Account, it will (where appropriate) be taken as a reference to the amount or balance calculated by reference to the number of Units of each Investment Option Portfolio in which the Account is invested and the relevant Sell Price of each of those Units at that time.
 - (iv) Notwithstanding clause 8.8, the investment performance attributable to a Member's Account shall be determined by reference to the number of Units of each Investment Option Portfolio in which the Member's Account is invested and any rise or fall in the Unit Price of those Units.
 - (v) Notwithstanding clause 6.2(e), a Beneficiary has no right to claim any interest or exercise any right in any particular part, investment or asset of an Investment Option Portfolio but only such interest in the relevant Investment Option Portfolio as a whole as is conferred on a Unit in accordance with this Deed.

9. Participation in Fund

9.1 Participation

- (a) A person who is permitted under the Superannuation Law to contribute to, or have benefits transferred to, the Fund may apply for:
 - (i) membership of the Fund, in the case of an individual; or

- (ii) participation in the Fund as a Participating Employer, in the case of an Employer,
in a form approved by the Trustee.
- (b) Each prospective Participant must:
 - (i) submit any documents (including any application form) in the form approved by the Trustee;
 - (ii) provide the Trustee with any information and evidence (including, in the case of Member, completing and signing any statements as to health and undergoing medical examinations and tests); and
 - (iii) satisfy any standards and requirements required by the Trustee.
- (c) Subject to the Superannuation Law and clause 9.1(b), the Trustee may, in its absolute discretion:
 - (i) admit a person as a Participant from the date the Trustee accepts the application or such other date determined by the Trustee;
 - (ii) reject or delay consideration of an application;
 - (iii) admit a person as a Participant from the date the Trustee accepts the application or such other date determined by the Trustee subject to such terms and conditions in relation to the person's membership and, in the case of an Employer, the Employer's participation or the membership of the Employees of the Employer; or
 - (iv) in respect of a person who has not applied for participation in the Fund in accordance with clause 9.1(a):
 - (A) accept a payment (including a transfer under clause 12.1) or credit an amount to an Account in the Fund (including an amount referred to in clauses 2.5(a)(iii) and 10.6(a)) by, or in respect of, the person in which case the person is taken to be a Participant from the date of such acceptance of payment or such other date determined by the Trustee; and
 - (B) admit an Employee who is nominated for membership by his or her Participating Employer and who is eligible to become a Member of the Fund under the Superannuation Law and this Deed as a Member of the Fund from the date requested by the Participating Employer or such other date determined by the Trustee; and
 - (C) otherwise – determine that the person is a Participant on and from a date determined by the Trustee.
- (d) The Trustee must deal with a person's application money:
 - (i) pending the processing and acceptance of that application; and
 - (ii) where the application is refused,
 in accordance with the Superannuation Law.

- (e) Each Beneficiary irrevocably appoints the Trustee his or her attorney to execute any instruments (including deeds) and do anything permitted by this Deed.
- (f) Each Member of the Fund agrees to be bound by this Deed.

9.2 Cessation of participation

- (a) A person ceases to be a Beneficiary when all of the person's entitlement to benefits from the Fund have been paid transferred or rolled over to another Benefit Arrangement or otherwise exhausted, satisfied, dealt with or terminated.
- (b) A Participating Employer shall cease to participate in the Fund;
 - (i) upon the Participating Employer giving the Trustee not less than 14 days (or such lesser period as agreed by the Trustee) notice in writing of its intention to cease participation in the Fund – with effect from the date specified in the notice or such earlier date as the Trustee may agree to;
 - (ii) upon the Participating Employer becoming bankrupt or being placed in liquidation or ceasing to carry on business for any reason whatsoever (unless an order is made or an effective resolution is passed for the winding up of the Participating Employer for the purpose of reconstruction or amalgamation and such reconstructed or amalgamated organisation then formed has the necessary power and agrees with the Trustee to take the place of the Participating Employer in the Fund) – with effect from the date determined by the Trustee; or
 - (iii) upon the Trustee, in its absolute discretion, giving the Participating Employer at any time notice in writing that the Participating Employer is to cease participation in the Fund – with effect from the date determined by the Trustee.

9.3 Special arrangements

- (a) The Trustee may agree with a person (including an Employer or the trustee of another Benefit Arrangement) that the participation of the person or another person (each a **Potential Participant**) in the Fund is subject to, or is varied in accordance with, the terms and conditions contained in the agreement, including:
 - (i) the amount of contributions to be made for, or by, the Potential Participant;
 - (ii) the benefits to be paid in respect of the Potential Participant;
 - (iii) the preservation requirements that are to apply to benefits;
 - (iv) the Membership Category to which an Employee of the Participating Employer will belong;
 - (v) if the Potential Participant will not be allowed to exercise Member Investment Choice, the manner in which his or her Account is to be invested;
 - (vi) if the Potential Participant will be allowed to exercise Member Investment Choice, the Investment Options available; and
 - (vii) the rights in respect of such benefits that the Potential Participant has in the Fund.

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

- (b) If the Trustee enters into an agreement referred to in clause 9.3(a) then, provided the benefit payable to the Member is not less than the minimum benefit that is required to be paid to the Member under the Superannuation Law:
 - (i) the benefits of the Employees of that Employer which are referred to in the agreement become payable and must be calculated in accordance with the provisions of the agreement;
 - (ii) unless the agreement provides otherwise, any benefits of the Employees of the Employer which are provided for by this Deed but which are not referred to in the agreement, continue to become payable and be calculated in accordance with this Deed;
 - (iii) the Trustee may apply any benefits to which an Employee of an Employer does not become entitled by virtue of the operation of this clause 9.3 against any contributions otherwise payable by the Employer in respect of any Member of the Fund, and any amount so applied is taken to be a contribution by the Employer; and
 - (iv) the Trustee may at any time unilaterally alter the provisions of an agreement to comply with the Superannuation Law.

9.4 Provision of information

- (a) Each Participant must provide all information and evidence, sign all documents, undergo all medical examinations and tests (in the case of a Beneficiary) and generally satisfy all standards and requirements requested by the Trustee.
- (b) An Employer shall as and when requested by the Trustee, give to the Trustee all information in its power or possession which may, in the opinion of the Trustee, be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer pursuant to this Deed.
- (c) The Trustee may refuse to admit a person as a Member or place conditions on the person's membership if:
 - (i) the person does not comply with clause 9.4(a) to the satisfaction of the Trustee; or
 - (ii) information provided by the person is incorrect or contains an omission.
- (d) Except as required by law, the Trustee is not bound to disclose to any person any of the following:
 - (i) any document disclosing any deliberations of the Trustee; or
 - (ii) any document relating to the exercise or proposed exercise of any Power conferred on the Trustee by this Deed.
- (e) The Trustee can provide information to an Employer Sponsored Member by providing that information to the Member's Employer.

10. Contributions

10.1 Amount, manner and timing

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

- (a) are as set out under a Plan; or
- (b) otherwise are as determined by the Trustee in its absolute discretion.

10.2 Refusal to accept contributions

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

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

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

10.3 Reasons for refusal of contributions

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

10.4 Return of improperly accepted or mistaken contributions

- (a) If the Trustee becomes aware that it has accepted contributions in relation to a Member:
 - (i) which cannot be, or should not have been, accepted into the Fund; or
 - (ii) as a result of a mistake of fact or mistake of law,

the Trustee may if permitted by the Superannuation Law, and must if required by the Superannuation Law, repay, return or refund, the contributions to the contributor.
- (b) If the Superannuation Law permits, the Trustee may adjust the repaid, returned or refunded contributions for:
 - (i) insurance effected in relation to the member;
 - (ii) Any (positive or negative) amounts at the Investment Performance Rate for the period the contributions were held in the Fund; and
 - (iii) Fund Expenses for the period the contributions referred to in clause 10.4(a) were held in the Fund.

10.5 Payment to, and by, Insurer, custodian, administrator or investment manager

- (a) Any payment of an amount directly to an Insurer, custodian administrator or investment manager is deemed to be a payment of contributions to the Trustee and, in turn, a payment by the Trustee to the Insurer, custodian, administrator or

investment manager, as the case may be. Where required by the Superannuation Law, the Trustee shall allocate such amounts to the Member or Members in respect of whom the amounts were paid.

- (b) Any payment of benefits payable from the Fund by an Insurer, custodian, administrator or investment manager directly to a Beneficiary is deemed to be a payment of benefits by the Insurer, custodian, administrator or investment manager, as the case may be, to the Trustee and, in turn, a payment by the Trustee to the Beneficiary from the Fund.
- (c) Any payment of contributions payable by an Employer Sponsored Member may be deducted from the Member's remuneration and paid by the Employer to the Trustee and the Member is deemed to have directed the Employer to make such deductions.

10.6 Spouse contribution splits

- (a) Subject to the requirements of the Superannuation Law, the Trustee may, on application of a Member:
 - (i) allot an amount of benefits, for the benefit of the Member's Spouse, that is equal to an amount of the splittable contributions made by, for, or on behalf of the Member; or
 - (ii) rollover or transfer to another Benefit Arrangement an amount of benefits, for the benefit of the Member's Spouse, that is equal to an amount of the splittable contributions made by, for, or on behalf of the Member,(such allotment, rollover or transfer to be known as a **Contribution Split**) whereupon the Trustee shall adjust the Member's interest in the Fund in such manner as the Trustee considers appropriate to reflect the Contribution Split under this clause 10.6.
- (b) The Trustee may accept an application made under clause 10.6(a) only if the application satisfies the requirements of the Superannuation Law.
- (c) The Trustee may from time to time:
 - (i) specify the terms and conditions (**Contribution Splitting Rules**) which, in addition to the requirements of the Superannuation Law, must be complied with by the Member and his or her Spouse in relation to the splitting of the contributions under this clause 10.6;
 - (ii) vary or revoke such Contribution Splitting Rules; and
 - (iii) charge fees in respect of a Contribution Split under this clause 10.6.

11. Benefits

11.1 Payment of benefits

- (a) Subject to Clause 11.6, details of benefits payable from the Fund:
 - (i) are as set out under a Plan; or
 - (ii) otherwise are as determined by the Trustee in its absolute discretion.

- (b) Where a policy is effected in respect of a Beneficiary or Beneficiaries, the Insured Benefit payable from the Fund to the Beneficiary or Beneficiaries must be determined in accordance with the terms and conditions of that policy and cannot exceed the Insured Benefit paid to the Trustee by the Insurer in respect of the Member.
- (c) The Trustee is not required to pay a benefit unless the person claiming the benefit:
 - (i) makes proper application to the Trustee in the form required by the Trustee;
 - (ii) provides information to the Trustee as requested by it to substantiate such claim and benefit; and
 - (iii) gives instructions in relation to the method of payment of the benefit which are acceptable to the Trustee.
- (d) Subject to the Superannuation Law, the Trustee may pay all or part of a benefit by:
 - (i) the transfer of an asset or assets;
 - (ii) paying the amount by cheque and by sending that cheque or delivering that cheque in any manner contemplated for the sending of notices under clause 16.1;
 - (iii) electronic funds transfer or telegraphic transfer; or
 - (iv) any other means determined by the Trustee.
- (e) Any Trustee decision as to the payment of benefits shall be revocable until actual payment of the benefit is made.
- (f) The Trustee may make any benefit payment conditional and repayable should the Trustee's decision to make that payment be varied, substituted or otherwise overturned by a court or tribunal.
- (g) Where permitted by the Superannuation Law, the Trustee may pay a benefit of a Beneficiary who, in the Trustee's opinion, is not capable of receiving that benefit or managing his or her affairs, to any other person for the benefit of the Beneficiary.
- (h) Any amount held in the Fund which is not allocated to any Beneficiary or to any Account or which may not or cannot be paid or which is not payable by the Trustee to any Beneficiary may be dealt with as the Trustee determines for any purpose determined by the Trustee which is permissible under the Superannuation Law, including reduction of contributions of a Participant or to meet Fund Expenses.

11.2 Charging benefits

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

11.3 Adjustment of benefits

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

- (a) any contributions which have not been paid;
- (b) contributions which have been repaid, returned or refunded under clause 10.4;
- (c) any actual or contingent Tax or Fund Expense;
- (d) any incorrect, inaccurate or misleading information supplied, or lack of information supplied, in respect of a Beneficiary;
- (e) the extent to which an Insurer fails to provide insurance, fails to pay or reduces the payment of any Insured Benefit, defers the payment of any Insured Benefit, or imposes terms and conditions on which the Insured Benefit is payable, to the Trustee; or
- (f) any amount the Trustee is liable to pay to another person (including a Regulator, the Commonwealth or a State or Territory) in respect of a beneficiary pursuant to the Superannuation Law.

11.4 Discharge and release

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

11.5 Payment of death benefits

Subject to the rules of a Plan:

- (a) **Death Benefit Nominations:** To the extent permitted by the Superannuation Law, the Trustee may permit a Member to direct the Trustee (by a written notice in a form approved by the Trustee) to pay all or any part of the Member's death benefit to such of the persons referred to in clause 11.5(e), and in such proportions, as is specified in the notice (**Death Benefit Nomination**).
- (b) **Change of Death Benefit Nomination:** A Member may:
 - (i) revoke a Death Benefit Nomination at any time; and
 - (ii) where the Trustee so permits, may give a new or replacement Death Benefit Nomination at any time.
- (c) **Trustee bound by valid Death Benefit Nomination:** If the Trustee has permitted a Death Benefit Nomination pursuant to clause 11.5(a), then subject to clause 11.5(g), the Trustee must pay the Member's death benefit in accordance with a valid Death Benefit Nomination provided the Death Benefit Nomination is not invalid and the Trustee is permitted to do so under the Superannuation Law.
- (d) **Invalid Death Benefit Nomination:** A Death Benefit Nomination is invalid if:
 - (i) any of the persons nominated in the Death Benefit Nomination is not a Dependant of the Member or, before the death of the Member, has died or has ceased to be a Dependant;
 - (ii) the proportions specified in the Death Benefit Nomination do not amount to 100% of that part of the Member's death benefit that is the subject of the Death Benefit Nomination;

- (iii) the Death Benefit Nomination is incomplete or is otherwise not completed in accordance with the requirements of the Trustee; or
 - (iv) the Death Benefit Nomination ceases to have effect under, or does not satisfy the requirements of, the Superannuation Law.
- (e) **No valid Death Benefit Nomination:** Subject to the rules of the relevant Plan, if a death benefit in respect of a Member is not paid in accordance with clause 11.5(c) for any reason whatsoever, the Trustee must pay the death benefit to:
- (i) unless the Member's estate is Insolvent, the Member's Legal Personal Representative; or
 - (ii) if:
 - (A) the Member's estate is Insolvent; or
 - (B) there is no Legal Personal Representative in respect of the Member's estate;

then to one or more of the Member's Dependants, in such proportions as the Trustee, in its absolute discretion, determines.
- (f) **Death Benefits where no Dependants and no Legal Personal Representative:** Subject to the rules of the relevant Plan and where permitted by the Superannuation Law, if after reasonable enquiries the Trustee cannot establish that there are any Dependants or a Legal Personal Representative in respect of a Member, the Trustee must pay a Member's death benefit to any other natural person or persons in such proportions as determined by the Trustee.
- (g) **Payment only required after claim staking:** The Trustee shall have no obligation to pay a death benefit in respect of a Member until:
- (i) the time to lodge a complaint to the Superannuation Complaints Tribunal by the persons notified by the Trustee under the Superannuation Law has elapsed; or
 - (ii) if the Trustee or the Member is subject to a court order preventing the payment of the death benefit in accordance with this clause 11.5 – the order is lifted; or
 - (iii) if the distribution of the death benefit is the subject of proceedings before a Court or a complaint to the Regulator or the Superannuation Complaints Tribunal – the proceedings or the complaint are finalised and the Trustee is satisfied that there is no further avenue for appeal from the decision of the Court, Regulator or Superannuation Complaints Tribunal.
- (h) **Anti-detriment payment:** The Trustee may augment the amount of any benefit payable on the death of a Member under this Deed by the amount (if any) of a deduction allowable to the Fund under section 295-485 of the *Income Tax Assessment Act 1997* (Cth).

11.6 Payments under the Superannuation Law

- (a) The Trustee:

Inserted
11/05/2017

- (i) may (but is not obliged to) pay a benefit where the payment of that benefit is permitted by the Superannuation Law; and
 - (ii) must pay a benefit where the payment of that benefit is required by the Superannuation Law; and
 - (iii) must not pay any benefit in whole or part where such benefit is not permitted to be paid pursuant to the Superannuation Law
- (b) Subject to the Superannuation Law, where the Trustee receives an authority to release part or all of a Member's benefit, which has been issued by the Commissioner of Taxation in accordance with the Superannuation Law (**release authority**), the Trustee must pay a lump sum benefit in respect of the Member equal to the lesser of:
- (i) the amount (if any) requested by the Member or Commissioner of Taxation;
 - (ii) the amount specified for release in the release authority; or
 - (iii) the sum of the values of every superannuation interest (other than a defined benefit interest) held by the Trustee in the Fund.
- (c) If under the Superannuation Law a benefit, or any part of a benefit, is a Preserved Benefit, the Trustee must:
- (i) with the written consent of the Beneficiary (if that is required by the Superannuation Law) pay that part of the benefit to a Benefit Arrangement that deals with it as the Superannuation Law requires; or
 - (ii) retain it in the Fund until it is paid in accordance with clause 11.6(a).
- (d) A Member must inform the Trustee as soon as practicable after the Member ceases to be eligible to have contributions made in respect of the Member to the Fund, or retain benefits in the Fund, under the Superannuation Law.

11.7 Recoupment of Tax and overpaid amount

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

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

11.8 Tax re-adjustments

Where:

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

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

11.9 Payment of benefits on trust

- (a) Where permitted by the Superannuation Law:
 - (i) on the request of a Beneficiary; or
 - (ii) if, in the opinion of the Trustee, a Beneficiary is a minor, infirmed or for any reason whatsoever is not capable of receiving a benefit or incapable of managing his or her own affairs or satisfactorily dealing with the benefit,

the Trustee may in its absolute discretion:

- (iii) defer payment of all or part of the benefit until such time as the Beneficiary is in the opinion of the Trustee able to give a good receipt thereof and in the meantime invest such moneys in any investment authorised under this Deed;
 - (iv) pay all or part of the benefit to any parent guardian or Legal Personal Representative of the Beneficiary or to any person who has custody or control for the time being of the Beneficiary. for the Beneficiary's maintenance, education, advancement or benefit; or
 - (v) pay all or part of the benefit the Public Trustee or to another person who agrees to act as trustee to hold on trust for the benefit of the Beneficiary with power for that trustee to make payment in accordance with clause 11.9(a)(iv). The Trustee may, if it chooses, establish the trust or otherwise determine the terms of the trust (whether or not it acts as the trustee of the trust) on which the benefit is to be held for the Beneficiary under this clause.
- (b) The receipt of the benefit by the trustee of the trust constitutes a complete and effectual discharge to the Trustee in relation to the amounts paid.
 - (c) The Trustee is not bound to see to the application of the benefit paid.

12. Transfers and rollovers

12.1 Transfers and rollovers into the Fund

The Trustee may arrange for the transfer or rollover into the Fund of cash or property with:

- (a) the person responsible for a Benefit Arrangement; or
- (b) a person who is or was a participant in a Benefit Arrangement

on conditions agreed between the Trustee and the other person.

12.2 Transfers and rollovers from the Fund

The Trustee may:

- (a) with the consent, or on the request, of a Beneficiary, transfer or rollover all or part of the benefit entitlements of the Beneficiary in a Plan to another Plan or Benefit Arrangement;
- (b) if the Superannuation Law permits, without the consent of the Beneficiary, deal with all or part of the benefit entitlements of a Beneficiary in a Plan:
 - (i) by transferring them or rolling them over to another Plan or Benefit Arrangement; or
 - (ii) by crediting them to new Accounts maintained for the Beneficiary in another Plan to which the Beneficiary has been admitted;
- (c) must, if required by the Superannuation Law, transfer or rollover benefits of a Beneficiary in a Plan to another Plan or Benefit Arrangement or to the Regulator in the circumstances required by the Superannuation Law.

12.3 Providing indemnities and undertakings

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

12.4 Discharge of Trustee's Liability

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

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

13. Termination of the Fund or a Plan

13.1 Termination of the Fund or a Plan

- (a) The Trustee may terminate the Fund, a Plan, Membership Category, Membership Division or Membership Section in its absolute discretion.

- (b) The Fund or a Plan must be terminated if there is no Trustee or Beneficiary or if the Superannuation Law requires.

13.2 Application of the Fund or Plan

The net proceeds of the Fund, a Plan, Membership Category, Membership Division or Membership Section after meeting Fund Expenses must be applied to or towards the payment of Beneficiaries' benefits in accordance with this Deed. Such payment is accepted by the Beneficiary in full discharge of all claims in respect of the Fund. The Trustee may deal with any remaining money or property in the Fund, a Plan, Membership Category, Membership Division or Membership Section as it determines in its absolute discretion.

14. Compulsory or Government Superannuation

14.1 Compulsory Superannuation

Where at any time an obligation is imposed upon an Employer to make compulsory contributions to a superannuation fund other than this Fund providing retirement death or disablement benefits in respect of Members of the Fund, then the Employer may immediately reduce its contributions to the Fund by the amount of the compulsory contribution being made to the other fund in respect of those Members who are members of the other fund.

14.2 Government Benefit Scheme

Where a scheme having government support or recognition whether in the Commonwealth of Australia or any State or Territory thereof or any other place with which the activities of the Employer are or may for the time being be concerned (the 'Government Scheme') provides or will provide Members or their Dependants with benefits which in the sole opinion of the Trustee are of a similar nature to any benefit provided under this Deed, the Trustee with the consent of the Employer may alter or vary in any way whatsoever the provisions of this Deed which in the sole discretion of the Trustee corresponds to the provisions of the Government Scheme.

15. Moneys owing to the Fund or to an Employer

15.1 Trustee's Lien

The Trustee may, to the extent allowed under Superannuation Law, exercise a lien over the benefit otherwise payable to or in respect of a Member who owes any moneys including the costs of any prosecution or civil proceedings to the Trustee, or in respect of whom a claim has been made by the Trustee for such moneys, until such time as the Member has paid or secured to the satisfaction of the Trustee the repayment of such moneys together with interest on those moneys at a rate determined by the Trustee.

15.2 Deduction from Benefit

Subject to the requirements of Superannuation Law, the Trustee may deduct from and if appropriate pay to the Employer any such moneys owing or satisfy any such claim out of the benefit to which the Member or any other person may be entitled and pay any balance to the Member or other person to whom the benefit would but for this clause have been payable.

16. General

16.1 Notices

All communications in connection with the Fund:

- (a) must be either in writing or if given orally must conform to instructions given by the Trustee;
 - (b) may be given to a Beneficiary:
 - (i) at his or her place of employment;
 - (ii) at such other address last notified to the Trustee by the Beneficiary; or
 - (iii) at the option of the Trustee, to the Beneficiary's Participating Employer or to that Participating Employer's last known address on behalf of the Beneficiary,
- and is deemed to be received by the Beneficiary on the earlier of:
- (iv) 2 business days after the notice is sent by mail; and
 - (v) the day the notice is received at the above address; and
- (c) must be given to the Trustee at its registered office and is effective only when received by the Trustee at that office.

16.2 Employer's Powers not Prejudiced

Nothing in this Trust Deed shall affect the powers of an Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between the Employer and Employee. The existence or cessation of any actual or prospective or possible benefit under the Fund shall not be grounds for claiming or increasing damages in any action brought against the Employer in respect of any termination of employment or otherwise.

16.3 Work Related Claims

Nothing in this Trust Deed shall in any way affect the right of a Member or his personal representative to claim damages or compensation under common law or under any workers' compensation legislation or any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of his employment with the Employer.

Inserted
20/12/12

17. My Super Product

17.1 Commencement

This clause shall commence from the Relevant Date.

17.2 Characteristics

- (a) Where a Member who has not elected in writing to the Trustee to have all SGC Act Contributions made by an Employer to the Fund on behalf of the Member who participates in the Fund pursuant to Schedule 1 or Schedule 2 of the Trust Deed to a Choice Product then any such contributions (**Default Contributions**) shall be credited by the Trustee to the Member's Accounts pursuant to Clause 8.3 and shall be a class of beneficial

interest in the Fund in a specific product in accordance with the SIS (**MySuper Product**).

- (b) Notwithstanding any other provisions of this Deed but subject to the SIS, the MySuper Product to which contributions are made pursuant to Clause 17.2(a) shall have the following characteristics:
- (i) a single diversified investment strategy must be adopted by the Trustee in relation to the assets of the Fund that are attributed to the MySuper Product, and
 - (ii) all Members who hold a beneficial interest in the MySuper Product shall be entitled to access the same options, benefits and facilities, and
 - (iii) in respect of the crediting of Net Earnings (if positive) or the debiting of Net Earnings (if negative) to a Member's Account, the same process must be adopted for all Members subject to Clause 17(c), and
 - (iv) in respect of attributing any Fund Expenses to the Member's Account the same process and timing of any deduction must be adopted for all Members **PROVIDED THAT** if an Employer elects to subsidise any fees payable by Members all Members who are employees of that Employer shall be entitled to the subsidy on an identical basis, and
 - (v) the Fund shall also accept contributions other than Default Contributions by or on behalf of a Member (including a Non-Member Spouse) other than where such contributions are proscribed in accordance with the SIS and any such contributions shall be credited by the Trustee to the Member's Accounts on the same basis as for Default Contributions, and
 - (vi) A Member's beneficial interest in the MySuper Product (**My Super Interest**) cannot be replaced with another type of beneficial interest in the Fund unless:
 - (i) the other type of interest is in another MySuper Product in the Fund, or
 - (ii) the Member who holds the interest consents in writing to the replacement,

and

- (vii) A Member's MySuper Interest (**the Existing Interest**) cannot be replaced with another type of beneficial interest in another fund or benefit arrangement (**the Replacement Interest**) unless:
 - (i) the Replacement Interest is in a MySuper Product and the replacement is either permitted or required under the Relevant Law, or
 - (ii) the Member who holds the Existing Interest consents in writing to the replacement, and
 - (viii) A Member's MySuper Interest is only payable as a lump sum other than in accordance with the SIS.
- (c) Notwithstanding Clause 17(b)(iii) Net Earnings (if positive or negative) may be credited or debited to a Member's Accounts on a differential basis in the following circumstances:
- (i) exclusively on the basis of the age of the Member,
 - (ii) on the basis of the age of the Member and other prescribed factors and/or in prescribed circumstances in accordance with the SIS.
- (d) Any Fund Expenses which are debited by the Trustee to the Member's Accounts in respect of the Member's My Super Interest shall only be so debited in accordance with the SIS which applies to MySuper Products as to both the nature of the fees payable and the charging rules in respect of the payment of such Fund Expenses

Inserted **17.3 Insured Benefits**

20/12/12 Notwithstanding any other relevant provisions of this Deed (including Clause 6.4) the Trustee shall effect a policy or policies with an Insurer as required under the SIS to provide insured benefits to all Members who hold a MySuper Interest in the event of their death or Permanent Incapacity including but not limited to arrangements which permit any such Member to elect not to be entitled to such insured benefits including circumstances where such election is made prior the Relevant Date.

Inserted **17.4 Accrued Default Amount**

20/12/12 The Trustee shall prior to the Prescribed Date transfer any Accrued Default Amount in respect of any Member to the MySuper Product other than where the Member to whom the Accrued Default Amount is attributable directs the Trustee in writing to transfer such amount to MySuper Product in another Benefit Arrangement or an investment option within a Choice Product in the Fund. In circumstances where such a transfer occurs, the Trustee shall comply with the SIS in relation to any notification to be provided to the Members for whom there is an Accrued Default Amount before a

decision is taken to transfer the amount to a MySuper Product, an investment option within a Choice Product in the Fund or to a MySuper Product in another Benefit Arrangement.

18. Governing law

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

Schedule 1 – Rules for the Employer Sponsored Members Plan

1.1 Name of Plan:

Employer Sponsored Members Plan.

1.2 Definitions:

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

Member means a person admitted by the Trustee to participate in this Plan under Rules 1.3(b) and 1.3(c).

Member's Benefit in relation to a Member means, subject to clause 9.3, the sum of:

- (a) the balance of all Accounts maintained for the Member under the Plan; and
- (b) subject to clause 6.4, the Insured Benefit (if any) in respect of the Member.

Participating Employer means an Employer admitted by the Trustee to participate in this Plan under Rule 1.3(a).

1.3 Participants

- (a) **Participating Employers:** An Employer may be admitted to participate in this Plan as a Participating Employer under clause 9.1 subject to the approval of, and the conditions imposed by, the Trustee.
- (b) **Members:** An Employee of an Employer that has been admitted to participate in this Plan under Rule 1.3(a) may participate in this Plan subject to the approval of, and the conditions imposed by, the Trustee.
- (c) **Other persons:** Any other person may be admitted to participate in this Plan under clause 9.1 subject to the approval of, and the conditions imposed by, the Trustee.

1.4 Contributions

- (a) **Participating Employer contributions generally:** Subject to the other provisions of this Deed, each Participating Employer will contribute to the Fund in respect of those of its Employees who are Members:
 - (i) such amounts as the Participating Employer may be required to contribute to a superannuation fund in respect of those Members under the terms of any industrial award, determination or agreement (whether or not registered) which applies to those Members' employment; and
 - (ii) such additional amounts as may be agreed from time to time between the Trustee, the Participating Employer and the Member.
- (b) **Other contributions, rollovers and transfers:** Subject to the Superannuation Law, the Trustee may accept in this Plan for the benefit of a Member:
 - (i) any contributions in respect of the Member from any person where permitted by the Superannuation Law (including without limitation eligible spouse contributions);

- (ii) an allotment of splittable contributions under clause 10.6(a)(i); and
 - (iii) a rollover or transfer from another Plan or Benefit Arrangement.
- (c) **Payment of Employer Contributions:** Contributions shall be paid by a Participating Employer at such times and in such manner as shall be agreed upon between the Trustee and the relevant Participating Employer but in any event, contributions must be paid to the Trustee within such maximum period (if any) as Superannuation Law specifies.
- (d) **Interest on Contributions:** The Trustee may require an Employer to pay an additional charge on any contributions payable by the Employer which are in arrears at such amount or rate as is determined by the Trustee.
- (e) **Member Contributions:** The Trustee may accept contributions from Members.
- (f) **Member contributions paid by Participating Employer:** A Participating Employer may pay, on behalf of a Member, contributions that are payable by the Member. Any contributions so paid by the Participating Employer, and identified as such, are deemed to be contributions made by the Member.
- (g) **Identification of contributions:** The Participating Employer and/or the Member must identify contributions and other amounts when required by the Trustee.

1.5 Benefits

Subject to clause 9.3, a Member is entitled to the following benefits under this Plan:

- (a) **Termination of employment of Employer Sponsored Member:** An Employer Sponsored Member is entitled to the Member's Benefit on ceasing employment with the Participating Employer, other than as a result of death or Total and Permanent Disablement. A benefit payable under this Rule 1.5(a) may be:
- (i) transferred or rolled over to another Plan or Benefit Arrangement under clause 12.2;
 - (ii) paid in the form of:
 - (A) if the pension will commence to be paid before 1 July 2007 - an Allocated Pension or a Transition to Retirement Allocated Pension; or
 - (B) if the pension will commence to be paid on or after 1 July 2007 – an Account Based Pension or a Transition to Retirement Income Stream,

payable in accordance with rule 1.5(e); or
 - (iii) if the benefit is not a Preserved Benefit, paid to the Beneficiary as one or more lump sums.
- (b) **Total and Permanent Disablement:** Subject to clause 6.4, a Member is entitled to the Member's Benefit on Total and Permanent Disablement. The Trustee may pay the Member's Benefit in such instalments and on such other conditions as it determines.
- (c) **Death:** Subject to clause 6.4, on the death of a Member, a death benefit equal to the Member's Benefit is payable in accordance with clause 11.5.

- (d) **Attaining preservation age:** A Member is entitled to the Member's Benefit upon attaining his or her preservation age. To the extent that a benefit payable under this Rule 1.5(d) is not an unrestricted non preserved benefit, it may be:
- (i) if the pension will commence to be paid before 1 July 2007, paid in the form of a Transition to Retirement Allocated Pension payable in accordance with Rule 1.5(e); or
 - (ii) if the pension will commence to be paid on or after 1 July 2007, a Transition to Retirement Income Stream payable in accordance with rule 1.5(e).
- (e) **Allocated Pension, TRAP, Account Based Pension and TRIS:** The Trustee may, on the request of a Member and where permitted by the Superannuation Law, transfer all or part of the lump sum payable to the Member to Schedule 3 to:
- (i) if the pension will commence to be paid before 1 July 2007 – purchase an Allocated Pension Account or a Transition to Retirement Allocated Pension; or
 - (ii) if the pension will commence to be paid on or after 1 July 2007 – purchase an Account Based Pension or a Transition to Retirement Income Stream,
- payable in accordance with Schedule 3. To the extent that the lump sum payable to the Member is transferred to Schedule 3, the Member shall cease to be entitled to a benefit under this Schedule and become entitled to a pension payable in accordance with the rules set out in Schedule 3.
- (f) **Temporary Disablement:** Subject to clause 6.4, if the Trustee has taken out a policy covering temporary disablement in respect of a Member and the Member suffers Temporary Disablement, the Trustee must pay the Member the Insured Benefit.
- (g) **Severe financial hardship:** Where a Member is taken to be in severe financial hardship (within the meaning of the Superannuation Law) and the Member requests payment of their Member benefit, the Trustee must pay to that Member an amount determined by the Trustee in accordance with the Superannuation Law, not exceeding the amount of the Member's Benefit.
- (h) **Compassionate grounds:** Where the Regulator has made a written determination that a Member has satisfied a condition of release on compassionate grounds, the Trustee must pay to that Member a single lump sum amount determined in writing by the Regulator, not exceeding the amount of the Member's Benefit.
- (i) **Terminal medical condition:** Where a Member suffers a terminal medical condition (within the meaning of the Superannuation Law) and the Member requests payment of their Member Benefit, the Trustee must pay to that Member the Member's Benefit.
- (j) **Other circumstances:** Notwithstanding any other provision of this Rule 1.5, where the Beneficiary has satisfied a condition of release which permits payment of the benefit to the Beneficiary or in such other circumstances permitted by the Superannuation Law, in the discretion of the Trustee, a benefit of a Beneficiary may be paid in the form permitted by the Superannuation Law.
- (k) **Transfer of Service:** Notwithstanding any provision of this Deed, if a Member leaves the employment of a Participating Employer and:

- (i) the Member remains in the employment of an Employer admitted to participate in this or any other Plan; or
- (ii) immediately commences employment with an Employer admitted to participate in this or any other Plan,

no benefit is payable to the Member unless the Trustee otherwise determines.

Schedule 2 – Rules for the Personal Plan

2.1 Name of Plan:

Personal Plan

2.2 Definitions

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

Member means a person admitted by the Trustee to participate in this Plan under Rule 2.3.

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

- (a) the balance of all Accounts maintained for the Member under the Plan; and
- (b) subject to clause 6.4, the Insured Benefit (if any) in respect of the Member.

2.3 Participants

Any person may be admitted to participate in this Plan under clause 9.1 subject to the approval of, and the conditions imposed by, the Trustee.

2.4 Contributions

- (a) **Employer contributions and eligible spouse contributions:** The Member's Employer or any other person who is permitted by the Superannuation Law to contribute for the benefit of the Member, may contribute to the Plan such amounts in respect of the Member as the contributor determines, in such manner, as is approved by the Trustee.
- (b) **Member contributions:** A Member may contribute to the Plan such amounts as are agreed between the Trustee and the Member.
- (c) **Member contributions paid by Employer:** An Employer may pay, on behalf of a Member, contributions that are payable by the Member. Any contributions so paid by the Employer, and identified as such, are deemed to be contributions made by the Member.
- (d) **Other contributions, rollovers and transfers:** Subject to the Superannuation Law, the Trustee may accept in this Plan for the benefit of a Member:
 - (i) contributions in respect of the Member from any other person where permitted by the Superannuation Law (including without limitation eligible spouse contributions);
 - (ii) an allotment of splittable contributions under clause 10.6(a)(i); and
 - (iii) a rollover or transfer from another Plan or Benefit Arrangement.
- (e) **Identification of contributions:** The Employer and/or the Member must identify contributions and other amounts when required by the Trustee.

2.5 Benefits

Subject to clause 9.3, a Member is entitled to the following benefits under this Plan:

- (a) **When benefit may become payable in respect of Non Employer Sponsored Member:** A Non Employer Sponsored Member is entitled to the Member's Benefit upon satisfying a condition of release, other than as a result of death, Total and Permanent Disablement or attaining preservation age. A benefit payable under this Rule 2.5(a) may be:
- (i) transferred or rolled over to a Benefit Arrangement under clause 12.2;
 - (ii) paid in the form of:
 - (A) if the pension will commence to be paid before 1 July 2007 - an Allocated Pension or a Transition to Retirement Allocated Pension; or
 - (B) if the pension will commence to be paid on or after 1 July 2007 – an Account Based Pension or a Transition to Retirement Income Stream,

payable in accordance with Rule 2.5(e); or
 - (iii) if the benefit is not a Preserved Benefit, paid to the Beneficiary as one or more lump sums.
- (b) **Total and Permanent Disablement:** Subject to clause 6.4, a Member is entitled to the Member's Benefit on Total and Permanent Disablement. The Trustee may pay the Member's Benefit in such instalments and on such other conditions as it determines. If the Trustee is satisfied that the Member is unable to manage his or her own affairs, the Trustee may pay the benefit in accordance with clause 11.5 as if it were a death benefit.
- (c) **Death:** Subject to clause 6.4, on the death of a Member before retirement, a death benefit equal to the Member's Benefit is payable according to clause 11.5.
- (d) **Attaining Preservation Age:** A Member is entitled to the Member's Benefit upon attaining his or her preservation age. To the extent that a benefit payable under this Rule 2.5(d) is not an unrestricted non preserved benefit, it must be:
- (i) if the pension will commence to be paid before 1 July 2007, paid in the form of a Transition to Retirement Allocated Pension payable in accordance with Rule 2.5(e); or
 - (ii) if the pension will commence to be paid on or after 1 July 2007, a Transition to Retirement Income Stream payable in accordance with rule 2.5(e).
- (e) **Allocated Pension, TRAP, Account Based Pension and TRIS:** The Trustee may, on the request of a Member and where permitted by the Superannuation Law, transfer all or part of the lump sum payable to Schedule 3 to:
- (i) if the pension will commence to be paid before 1 July 2007 – purchase an Allocated Pension Account or a Transition to Retirement Allocated Pension; or
 - (ii) if the pension will commence to be paid on or after 1 July 2007 – purchase an Account Based Pension or a Transition to Retirement Income Stream,
- payable in accordance with Schedule 3.

To the extent that the lump sum payable to the Member is transferred to Schedule 3, the Member shall cease to be entitled to a benefit under this Schedule and become entitled a pension payable in accordance with the rules set out in Schedule 3.

- (f) **Temporary Disablement:** Subject to clause 6.4, if the Trustee has effected a policy covering Temporary Disablement in respect of a Member and the Member suffers temporary disablement, the Trustee must pay the Member the proceeds of that policy which relate to the Member.
- (g) **Severe financial hardship:** Where a Member is taken to be in severe financial hardship (within the meaning of the Superannuation Law), the Trustee must pay to that Member an amount determined by the Trustee in accordance with the Superannuation Law, not exceeding the amount of the Member's Benefit.
- (h) **Compassionate grounds:** Where the Regulator has made a written determination that a Member has satisfied a condition of release on compassionate grounds, the Trustee must pay to that Member a single lump sum amount determined in writing by the Regulator, not exceeding the amount of the Member's Benefit.
- (i) **Terminal medical condition:** Where a Member suffers a terminal medical condition (within the meaning of the Superannuation Law) and the Member requests payment of their Member Benefit, the Trustee must pay to that Member the Member's Benefit.
- (j) **Other circumstances:** Notwithstanding any other provision of this Rule 2.5, where the Beneficiary has satisfied a condition of release which permits payment of the benefit to the Beneficiary or in such other circumstances permitted by the Superannuation Law, in the discretion of the Trustee, a benefit of a Beneficiary may be paid in a form permitted by the Superannuation Law.

28/3/2013 2.6 Member Investment Choice

Inserted

A Member shall be required to exercise Member Investment Choice in respect of any of the Member's Accounts and any contributions made by or on behalf of the Member to any of the Member's accounts and the Trustee shall comply with Clause 6.2 of the Trust Deed having regard to the Member's Member Investment Choice in respect of any Investment Option or Investment Options made by a Member pursuant to that clause.

Schedule 3 – Rules for the Allocated Pension, TRAP, Account Based Pension and TRIS Plan

3.1 Name of Plan:

Allocated Pension, TRAP, Account Based Pension and TRIS Plan.

3.2 Definitions:

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

Account Based Pension means a pension payable from this Plan under this Schedule which complies with the standards set out in subregulations 1.06(1) and 1.06(9A)(a) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

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

Death Benefit means the balance of the Member's Pension Account at the date the Member's Pension Account is distributed in accordance with Rule 3.13.

Member means a person admitted by the Trustee to participate in this Plan under Rule 3.3.

Nominated Beneficiary means a person who the Member has nominated in writing in any form determined by the Trustee, to receive the Member's Death Benefit under Rule 3.13(a).

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

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

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

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

Reversionary Beneficiary means a person to whom a Pension is payable upon the death of a Member in accordance with Rule 3.13(f).

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

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

3.3 Participants

Any person to whom the Trustee may pay a Pension without breaching the Superannuation Law may be admitted to participate in this Plan as a Member under clause 9.1 subject to the approval of, and the conditions imposed by, the Trustee.

3.4 Acceptance of contributions, rollovers and transfers

- (a) Subject to the Superannuation Law, the Trustee may accept into the Plan for the benefit of a Member:
 - (i) the rollover or transfer of benefits from another Benefit Arrangement in respect of a Member;
 - (ii) contributions in respect of the Member from any person (including without limitation eligible spouse contributions in respect of the Member);
 - (iii) an allotment of splittable contributions under clause 10.6(a)(i); and
 - (iv) a rollover or transfer of an amount, equal to the splittable contribution made by or on behalf of the Member's Spouse, from another Benefit Arrangement.
- (b) The Trustee may establish rules governing the acceptance of amounts under Rule 3.4(a) including, but not limited to, the minimum amount that may be accepted.
- (c) The capital supporting a Pension cannot be added to by way of contribution or rollover after the Pension Commencement Date for the Pension.

3.5 Pension Account

- (a) Upon the admission of a Member to participate in this Plan, the Trustee shall establish and maintain in respect of the Member, one or more Pension Accounts to which:
 - (i) the Trustee shall credit:
 - (A) any contributions made to the Plan under Rule 3.4(a) in respect of the Member;
 - (B) such amounts as are rolled over or transferred to the Fund pursuant to clause 12.1,
 - (C) such amounts as the Trustee determines to transfer from other Accounts in the Fund;
 - (D) any positive amounts at the Investment Performance Rate or Investment Performance Rates, and any other positive amounts, attributable to the investment of the Pension Account; and
 - (E) any other amounts which the Trustee determines from time to time to credit to the Pension Account; and
 - (ii) the Trustee shall debit:
 - (A) Pension payments made in respect of a Pensioner or Reversionary Beneficiary under this Schedule;
 - (B) any Fund Expenses which the Trustee determines from time to time;
 - (C) any amounts which the Trustee determines to transfer to the Fund Reserve Account in respect of providing and paying for any Tax and/or Fund Expenses and any other contingencies of the Fund;

- (D) any amounts which the Trustee determines to transfer to one or more reserve or provision Accounts or any other Accounts maintained by the Trustee for the purposes of the Fund;
 - (E) any negative amounts at the Investment Performance Rate or Investment Performance Rates, and any other negative amounts, attributable to the investment of the Allocated Pension Account;
 - (F) such amounts as are rolled over or transferred to another Benefit Arrangement under clause 12.2; and
 - (G) any other amounts which the Trustee determines from time to time to debit the Pension Account.
- (b) Where the Trustee accepts contributions or the rollover or transfer to the Plan in respect of a Pensioner after the Pension Commencement Date, the Trustee must credit such amount to a new Pension Account from which a new and separate Pension shall be paid in accordance with the provisions of this Plan.

3.6 Pension payments

- (a) Subject to the Superannuation Law and rule 3.7, a Pensioner is entitled to an Allocated Pension, a TRAP, an Account Based Pension or a TRIS, as agreed with the Trustee, in accordance with the provisions of this Schedule.
- (b) Each Pension shall be paid from the Pension Commencement Date and continue to be paid for such period (if any) as is agreed between the Member and the Trustee unless the balance of the Member's Pension Account is exhausted before that time.
- (c) In respect of that part (if any) of a Pension Account that is not an unrestricted non-preserved benefit, the Trustee must pay either:
 - (i) if the pension will commence to be paid before 1 July 2007 – a TRAP; or
 - (ii) if the pension will commence to be paid on or after 1 July 2007 – a TRIS.
- (d) The Trustee may, in its absolute discretion, pay the Pension from segregated current pension assets of the Fund, as provided in clause 7, or by purchasing a Pension in the name of the Member from another Benefit Arrangement.

3.7 Changes from one Pension to another Pension

Subject to the Superannuation Law, the Trustee may:

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

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

3.8 Pension to comply with the Superannuation Law

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

3.9 Pension Commencement Date

- (a) **Nomination of Pension Commencement Date:** The Trustee may allow a Member to nominate the Pension Commencement Date for each Pension Payable in respect of the Member.
- (b) **Pension Commencement Date must comply with the Superannuation Law:** The Pension Commencement Date must not be later than the date necessary to comply with the Superannuation Law and, in the case of an Allocated Pension and a TRAP, must not otherwise be later than 30 June 2007.
- (c) **Member fails to nominate Pension Commencement Date:** If the Trustee allows a Member to nominate the Pension Commencement Date for a Pension payable in respect of the Member and the Member does not nominate a Pension Commencement Date that complies with the Superannuation Law as it relates to that Pension:
 - (i) the Trustee may commence to pay the Pension with effect from a Pension Commencement Date that complies with the relevant Law as it relates to that Pension; or
 - (ii) if the Trustee is unable to identify a Pension Commencement Date that complies with the Superannuation Law, the Trustee may (in accordance with rule 3.7) commence to pay a different Pension (**new Pension**) with effect from a Pension Commencement Date that complies with the Superannuation Law as it relates to the new Pension.
 - (iii) transfer the Member and the Member's Pension Account to another Plan.

3.10 Frequency of Pension payments

- (a) **Frequency of Pension payments:** Subject to the Superannuation Law, the Trustee must make Pension payments to the relevant Pensioner with such frequency and at such intervals and times as are agreed between the Trustee and the Pensioner.
- (b) **Trustee may alter the frequency of Pension payments:** Subject to the Superannuation Law, the Trustee may alter the frequency with which Pension payments are to be made:
 - (i) at any time the Trustee considers appropriate; or
 - (ii) at any time agreed upon between the Pensioner and the Trustee.
- (c) **Default frequency of Pension payments:** If at any time the frequency of the Pension payments has not been agreed upon by the Trustee and the Member, the Trustee must ensure that at least one Pension payment is made during each financial year after the Pension Commencement Date.
- (d) **Minimum frequency of Pension payments:** Notwithstanding any agreement with the Member to the contrary, the Trustee must ensure that at least one Pension payment is made to the Member during each financial year after the Pension Commencement Date.

3.11 Selecting the value of Pension payments

- (a) **Nomination of value of Pension payments:** The Trustee may allow a Member to nominate the value of Pension payments to be paid under a Pension during a financial year.

- (b) **Limits on value of Pension payments:** The sum of the Pension Payments made under a Pension to a Member in each financial year or part of a financial year must not be:
- (i) less than the minimum limits; nor
 - (ii) in the case of an Allocated Pension, a TRAP or a TRIS - greater than the maximum limits,

set out in the Superannuation Law (as it relates to that Pension), provided such payments do not exceed the value determined by the Trustee. In the event that such payments fall outside such limits, the Trustee may, without notice, make such adjustment to value of all or some of the Pension payments as the Trustee considers necessary to ensure that their sum does fall within the limits required under this Rule.

- (c) **Notification of limits on the value of Pension payments:** The Trustee must notify the Pensioner of the minimum limits (and, in the case of an Allocated Pension, a TRAP or a TRIS, the maximum limits) required under Rule 3.11(b) for the relevant financial year and it must do so at the following times:
- (i) within a reasonable time and in any event within such time as prescribed by the Superannuation Law of the person becoming a Member of the Plan; and
 - (ii) as at 1 July of every year, within a reasonable time of that date, until the Pension ceases to be paid.
- (d) **Member fails to nominate the value Pension payments:** If the Trustee allows a Member to nominate the value of Pension payments and the Member does not nominate a value within the limits required under Rule 3.11(b) within such period as determined by the Trustee, the Trustee must either:
- (i) make the Pension payments for the current financial year calculated according to any previous agreement between the Trustee and Member; or
 - (ii) in the absence of any such agreement make the Pension payments at the minimum limit required to be paid under Rule 3.11(b).
- (e) **Trustee powers of adjustment:** The Trustee may at any time and without prior notice to the Pensioner adjust the value of Pension payments to such Pensioner to a level that complies with the Superannuation Law.

3.12 Commutation

- (a) **Pensioner commutation:** Subject to Rule 3.12(d) and the Superannuation Law, the Trustee may, on the request of a Pensioner, commute to a lump sum, the whole or any part of his or her Pension where permitted by the Superannuation Law.
- (b) **Benefit payment on commutation:** Subject to Rule 3.12(d), on the commutation of the whole of a Pension, subject to the Superannuation Law, the Trustee must pay a lump sum benefit to the Pensioner equal to the balance of his or her Pension Account as at the date of commutation.
- (c) **Payment on partial commutation:** Subject to Rule 3.12(d), on the commutation of part of a Pension, subject to the Superannuation Law, the Trustee must pay a lump sum benefit to the Pensioner from his or her Pension Account equal to the

amount requested up to the balance of the Pension Account as at the date of commutation.

- (d) **Commutation of TRAP or TRIS:** The Trustee may only commute a TRAP or TRIS (or any part of it) if:
- (i) the purpose of the commutation is:
 - (A) to cash an unrestricted non-preserved benefit;
 - (B) to pay a superannuation contributions surcharge;
 - (C) to give effect to an entitlement of a Non-Member Spouse under a payment split; or
 - (ii) after the commutation, the amount commuted would be an unrestricted non-preserved benefit.
 - (iii) in any other circumstances permitted by the Superannuation Law as it relates to that Pension.
- (e) **Trustee's commutation:** If the Trustee must commute all or any part of a Pension that is being paid to a Pensioner or a Reversionary Beneficiary where required by the Superannuation Law.

3.13 Death of Pensioner

- (a) **Non-binding nomination of Beneficiary:** Unless a Reversionary Beneficiary is nominated pursuant to rule 3.13(b), the Trustee may allow a Pensioner to nominate, in a form approved by the Trustee, how the Pensioner would prefer his or her Death Benefit to be distributed among the Pensioner's Dependants and/or Legal Personal Representatives upon his or her death. A nomination made under this Rule is given for information only and shall not limit the Trustee's discretion on the distribution of the Pensioner's Death Benefit.
- (b) **Rules for nomination of Reversionary Beneficiary:** The Trustee may approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of, and payment of the Pensioner's Death Benefit to, the Nominated Beneficiary as the Trustee in its absolute discretion determines.
- (c) **Payment of a Pensioner's Death Benefit:** Upon the death of a Pensioner who is entitled to receive a Pension, the Trustee shall distribute the Pensioner's Death Benefit in accordance with:
- (i) clause 11.5;
 - (ii) clauses 11.6 or 11.7, having regard to any nomination made by the Pensioner under Rule 3.13(a).
 - (iii) rule 3.13(f).
- (d) **Payment to Legal Personal Representative or other non-Dependant:** If the Trustee determines to pay all or any part of the Pensioner's Death Benefit to the Pensioner's Legal Personal Representative under clause 11.5 or 11.6 or a person (other than a Dependant) under clause 11.7, the Trustee must pay that amount as a lump sum benefit.

- (e) **Payment to Dependant:** If the Trustee determines to pay all or any part of the Pensioner's Death Benefit to a Dependant pursuant to clause 11.5 or 11.6, the Trustee shall pay that amount as a lump sum benefit unless the Trustee, on the request of that person and subject to the Superannuation Law, agrees to pay the amount in the form of:
- (i) if the pension will commence before 1 July 2007, an Allocated Pension; or
 - (ii) if the pension will commence on or after 1 July 2007, an Account Based Pension..
- (f) **Payment to Reversionary Beneficiary:**
- (i) Upon the death of a Pensioner who has nominated a Reversionary Beneficiary for the Pension, the Trustee must, subject to the Superannuation Law, continue to pay the Pension to the Reversionary Beneficiary until the earlier of:
 - (A) the Pension Account reaching zero; or
 - (B) the death of the Reversionary Beneficiary or
 - (C) the payment is no longer permitted by the Superannuation Law in the form of a Pension,

in which case, the balance (if any) of the Pension Account must be paid to the Reversionary Beneficiary as a lump sum.
- (g) **Reference to Pensioner reads as Reversionary Beneficiary:** If the Trustee pays a Pension to a Reversionary Beneficiary under Rule 3.13(f), subject to such conditions and restrictions as the Trustee determines, references to the Member or Pensioner in this Schedule must be read as a reference to the Reversionary Beneficiary.

3.14 Cessation of Pension

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

3.15 Transfer of Pension Account

The Trustee may, at the request of a Pensioner, transfer the balance of the Pensioner's Pension Account to another Benefit Arrangement in accordance with clause 12.2.

3.16 Cessation of membership

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

3.17 Limit on reversion and commutation

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

3.18 No Transfer

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

3.19 Pension not to be used as security

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