

Consolidated Trust Deed for the WA Local Government Superannuation Plan

WA Local Government Superannuation Plan Pty Ltd
ABN 64 066 797 162

herbertgeer

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Reference MXA:1356654
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Release

Version	Date Released	Clauses Affected	Remarks
1.1	23 Nov 2005	1, 6.2a, 20.1(3), 9.8, 62.1, 62.10, 62.11	Portability, Admin Reserve & Pensions
1.2	1st January 2006	1, 20.8, 21.4, 64(2) 64(2), 64(5)	Splitting Contributions, Reversionary pensions, Market linked pensions.
1.3	1st July 2007	1, 3.5, 9.2, 13.2, 14.1, 19.1, 20, 21, 26, 27, 66, 67, 68, 69, 70, 71,	Contributions, Tax offsets, Release Authorities, pension Changes, Anti Money Laundering
2.0	1st October 2007	Consolidated Version Incorporating amendments 1, 2 & 3	Consolidation Only.
2.1	1st January 2009	Spouse – Same Sex relationships 1.18 page 2 1.31 Page 3 1.103 page 8	Legislative amendment
3.0	1 st July 2013	1, 9.8, 9.9, 12.5, 13.3, 13.9, 16.1, 19.15, Part 20, Schedule 1 are amended or inserted 10.11 & 16.4 are deleted	Legislative amendment (MySuper)
3.1	3 rd December 2013	13.9 & 25.4 inserted 47 & 57 deleted	Trustee powers to marketing the Plan and invest deceased Member's monies in alternate investment options

Table of contents

<i>Clause</i>	<i>Page</i>
SECTION 1	1
MANAGEMENT AND ADMINISTRATION	1
PART 1	1
1. INTERPRETATION - DEFINITIONS	1
2. INTERPRETATION - GENERAL	10
2.1 Plural of words	10
2.2 Headings to Clauses	10
2.3 Defined words	10
2.4 Statutory enactments	10
2.5 Plan Subject to Relevant Law	10
2.6 Requirements of Regulator	10
2.7 Superannuation Guarantee Legislation	11
2.8 Australian Currency	11
PART 2	11
3. CONFIRMATION	11
3.1 Maintenance of Plan	11
3.2 Assets of the Plan	11
3.3 Sections and Divisions within the Plan	11
3.4 Allocation of Assets	11
3.5 Divisions	11
3.6 Rules	12
3.7 Application of Assets	12
3.8 Constitution of New Division	12
3.9 Badged Divisions	12
4. GENERAL PROVISIONS	12
4.1 Employer's powers not prejudiced	12
4.2 Exercise of Trustee's rights	13
4.3 Rights of Members	13
4.4 Inquiries, Complaints and Disputes	13
4.5 Benefits Secured	13
4.6 Members Bound by Deed	13
4.7 Service by the Trustee	13
4.8 Service on the Trustee	14
4.9 Relevant Law to Prevail	14
5. PROPER LAW	14
PART 3	14

TABLE OF CONTENTS (continued)

<i>Clause</i>		<i>Page</i>
6.	EMPLOYERS AND MEMBERS	14
6.1	Employer Application for Membership	14
6.2	Acceptance of Application by Employer	14
6.3	Application for Membership	15
6.4	Disclosure Document	15
6.5	Admission to Membership	15
6.6	Members and Beneficiaries to Provide Information	16
6.7	Incorrect or Misleading Information	16
6.8	Information re Age	16
6.9	Cessation of Membership	16
6.10	Information on Employers and Members	17
6.11	Inspection of Information	17
6.12	Termination of Participating Employer's Contributions	17
6.13	Transfer of Participating Employer's Business	18
6.14	Reconstruction or Amalgamation of a Participating Employer	18
7.	MEMBERSHIP NOTIFICATION REQUIREMENTS	19
7.1	Notice to New Members	19
7.2	Disclosure and Reporting Requirements	19
7.3	Notice to Former Member	19
7.4	Disclosure Limitation	19
7.5	Inspection of Trust Deed and other Documents	20
7.6	Nominated Dependant	20
7.7	Sub-Plans	20
PART 4		20
8.	THE PLAN	20
8.1	Plan Vested in Trustee	20
8.2	Plan Assets	20
9.	PLAN ACCOUNTS	21
9.1	Accumulation Accounts	21
9.2	Credits to Accumulation Accounts	21
9.3	Debits to Accumulation Accounts	22
9.4	Administration Account	23
9.5	Equalisation Accounts	24
9.6	Adjustment of Accumulation Account or Pension Account	25
9.7	Valuation of the Plan	25
9.8	Administration Reserve Account	25
9.9	Operational Risk Reserve	25
10.	PLAN RECORDS, DISCLOSURE AND INVESTIGATION	26
10.1	Receipt and payment of moneys	26
10.2	Issue of receipts	26

TABLE OF CONTENTS (continued)

<i>Clause</i>		<i>Page</i>
10.3	Records and accounts to be kept	26
10.4	Audit	26
10.5	Information for Trustee	27
10.6	Disclosure and Reporting Requirements	27
10.7	Production of Books or Access to Premises	27
10.8	Directions of Regulator	27
10.9	Information and Documents for Tribunal	28
10.10	Lost Members	28
10.11	Confidentiality	28
10.12	Costs of Supplying Information	28
PART 5		28
11.	PLAN TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL	28
11.1	Trustee must be a Constitutional Corporation	28
11.2	Member and Employer Representation	28
11.3	Change of Trustee	28
11.4	Appointment of Trustee	29
11.5	Retirement of Trustee	29
11.6	Significant Adverse Event	29
11.7	Reasonable and Proper Costs	29
11.8	Antecedent Breach by Trustee	29
12.	TRUSTEE'S INVESTMENT POWERS	29
12.1	Investment Strategy	29
12.2	Authorised Investments	29
12.3	Power to Sell, Vary and otherwise deal with Investments	30
12.4	Interest of Trustee in Investment	30
12.5	Provision of Investment Choice	31
13.	TRUSTEE'S POWERS OF MANAGEMENT	32
13.1	Trustee to Manage each Division	32
13.2	Additional Powers	32
13.3	Exercise of Trustee Powers	34
13.4	Trustee Discretion	34
13.5	Trustee Delegation	34
13.6	Trustee Direction	34
13.7	Compliance with Relevant Law	35
13.8	Failure to Comply with Relevant Law	35
13.9	Application of rules to Directors	35
13.10	Marketing and promoting the Plan	35
14.	LIMITATION OF LIABILITY	36
14.1	Liability of Trustees, Directors and Officers	36
14.2	Loss, Default, bona fide acts, mistake	36

TABLE OF CONTENTS (continued)

<i>Clause</i>	<i>Page</i>
14.3 Limitation of exemption from liability	36
15. INDEMNITY OF TRUSTEE	37
15.1 Indemnity and Lien	37
15.2 Payments in Good Faith	37
15.3 Opinion or Advice	37
15.4 Failure to Carry Out Agreement	37
15.5 Agents and Servants of Trustee	37
15.6 Limitation of Indemnity	37
16. REMUNERATION OF TRUSTEE	38
16.1 Costs and Disbursements	38
16.2 Fees Determined at Discretion of Trustee	38
16.3 Reimbursement	38
PART 6	39
17. APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS	39
17.1 Actuary and Auditor	39
17.2 Administrator	39
17.3 Investment Manager	39
17.4 Custodian	39
17.5 Consultants and Officers	40
17.6 Removal	40
18. ACTUARIAL INVESTIGATIONS	40
PART 7	40
19. CONTRIBUTIONS TO PLAN	40
19.1 Minimum and Maximum Contributions to the Plan	40
19.2 Member's Contributions	40
19.3 Employer's Contributions	41
19.4 Additional Contributions	41
19.5 Refund or Transfer of Payments	41
19.6 Refund of Government Co-Contributions	41
19.7 Interest on Contributions	41
19.8 Contributions in Cash or Assets	41
19.9 No Obligation to Contribute	42
19.10 Limitation on Accepting Contributions	42
19.11 Level of Contributions	42
19.12 Ineligible Contributions	42
19.13 Contributions by and on behalf of a Spouse	42
19.14 Direct Payment	42
19.15 Refusal of Small Contributions	43
19.16 Apportionment Between Members	43

TABLE OF CONTENTS (continued)

<i>Clause</i>	<i>Page</i>
19.17 Other Contributions	43
20. TRANSFERS TO APPROVED BENEFIT ARRANGEMENTS	43
20.1 Transfers to Approved Benefit Arrangements	43
20.2 Effect and Method of Transfer Out	44
20.3 Roll Over	44
20.4 Rollover or Transfer of Withdrawal Benefit	44
20.5 Eligible Rollover Funds	45
20.6 Preserved Payment Transfers	45
20.7 Lost Members	45
20.8 Trustee can transfer Splittable Contributions	45
PART 8	47
21. TRANSFERS FROM APPROVED BENEFIT ARRANGEMENTS	47
21.1 Takeover or Transfer of Benefits	47
21.2 Rights and Entitlements of Member in Transferred Benefits	47
21.3 Consent of Relevant Person	47
21.4 Trustee May Receive Splittable Contributions	47
PART 9	47
22. MONEYS OWING TO PLAN	47
PART 10	48
23. FORFEITURE OF BENEFIT ENTITLEMENTS	48
23.1 Conditions of Forfeiture	48
23.2 Accumulation Account Residue	48
23.3 Forfeiture Account	48
23.4 Application of Forfeited Benefit Entitlements	49
23.5 Readjustment of Member Interest	49
23.6 Severability	50
PART 11	50
24. TRANSFER IN SPECIE	50
24.1 Transfer of Policy	50
24.2 Transfer of Investments	50
24.3 No Beneficial Interest	50
PART 12	51
25. PAYMENT OF BENEFITS ON DEATH	51
25.1 Payments to Dependants or Legal Personal Representatives	51
25.2 Payments to Other Persons	51
25.3 Discharge of Trustee	51
25.4 Investment of Member monies on Death	51

TABLE OF CONTENTS (continued)

<i>Clause</i>	<i>Page</i>
26. PAYMENT OF BENEFITS	52
26.1 Address for Benefits	52
26.2 Notification of Address	52
26.3 Receipt for Benefits	52
26.4 Notification of Claims and Proofs	52
26.5 Notification Outside Time Limit	53
26.6 No Personal Claim	53
26.7 Payment to Others on Behalf of Beneficiaries	53
26.8 Preservation Conditions	53
26.9 Compulsory Payment of Benefits	54
26.10 Unclaimed Benefits	54
26.11 Death of Former Member Prior to Benefit Payment	54
26.12 Limitation on Benefits	54
PART 13	54
27. PAYMENT OF TAXATION AND LEVIES	54
27.1 Tax on Benefits	54
27.2 Tax on Contributions and Shortfall Components	54
27.3 Tax on Income	54
27.4 Surcharge	55
27.5 Payment to Relevant Authority	55
27.6 Payment made pursuant to Release Authority	55
PART 14	55
28. POLICIES OF ASSURANCE	55
28.1 Trustee to effect Policy	55
28.2 Trustee Right to Rectify	55
28.3 Premiums for Policy	55
28.4 Limitations on Policy	56
28.5 Establishment of Advisory Panels	56
28.6 Payment of Insured Benefit	56
28.7 Recovery of Insured Benefit	56
PART 15	56
29. OTHER SUPERANNUATION OBLIGATIONS	56
PART 16	57
30. VARIATION OF TRUST DEED	57
30.1 Deed	57
30.2 Notice	57
30.3 Limitation on Variation	57
30.4 Further limitation on Variation	57
30.5 Omission	58

TABLE OF CONTENTS (continued)

<i>Clause</i>	<i>Page</i>
PART 17	58
31. WINDING UP OF PLAN	58
31.1 Election to Terminate	58
31.2 Procedure on Winding Up of Plan	58
31.3 Exhaustion of Plan	58
PART 18	59
32. PAYMENT OF NON-PRESERVED AMOUNTS	59
33. INCREASES TO BENEFITS	59
34. RETENTION OF BENEFIT IN PLAN	59
PART 19	60
FAMILY LAW ACT PROVISIONS	60
35. TRUSTEE TO PROVIDE INFORMATION	60
36. PAYMENT FLAGS	61
37. PAYMENT SPLITS	61
38. PAYMENTS THAT ARE NOT SPLITTABLE PAYMENTS	62
39. FEES	62
PART 20	63
MYSUPER RULES	63
40. MYSUPER PRODUCT	63
41. LARGE EMPLOYER MYSUPER PRODUCT	64
SECTION 2 - DIVISIONAL RULES	66
DIVISION 1 - RULES OF EMPLOYER SPONSORED PLAN	66
42. MEMBERSHIP AND APPLICATION OF DIVISION	66
42.1 Membership Criteria	66
42.2 Application of this Part	66
43. MEMBERSHIP CLASSIFICATION	66
44. CONTRIBUTIONS	66
44.1 Member Contributions	66
44.2 Spouse Contributions	66
44.3 Employer Contributions	67

TABLE OF CONTENTS (continued)

<i>Clause</i>	<i>Page</i>
45. PAYMENT OF BENEFITS	67
45.1 Lump Sum Payment	67
45.2 Pension Payment	68
46. TEMPORARY TOTAL DISABLEMENT	68
46.1 Recognition of Temporary Total Disablement	68
46.2 Ceasing to be Temporarily Totally Disabled	68
46.3 Payment of Insured Benefit	68
46.4 Contribution Suspended	69
46.5 Membership Continues	69
47. EARLY RETIREMENT FROM EMPLOYMENT	69
48. LATE RETIREMENT FROM EMPLOYMENT	69
49. 69	
50. PAYMENT ON DEATH	69
50.1 Lump Sum Benefits	69
50.2 Pension Benefit	70
DIVISION 2 - RULES OF PERSONAL PLAN	71
51. MEMBERSHIP AND APPLICATION OF DIVISION	71
52. APPLICATION OF THIS DIVISION	71
53. MEMBERSHIP CLASSIFICATION	71
54. CONTRIBUTIONS	71
54.1 Member Contributions	71
54.2 Spouse Contributions	71
54.3 Employer Contributions	72
55. PAYMENT OF BENEFITS	72
55.1 Lump Sum Payment	72
55.2 Pension Payment	72
56. TEMPORARY TOTAL DISABLEMENT	72
56.1 Recognition of Temporary Total Disablement	72
56.2 Ceasing to be Temporarily Totally Disabled	72
56.3 Payment of Income Benefit	73
56.4 Contribution Suspended	73
56.5 Membership Continues	73
57. EARLY RETIREMENT FROM EMPLOYMENT	73
58. LATE RETIREMENT FROM EMPLOYMENT	73

TABLE OF CONTENTS (continued)

<i>Clause</i>	<i>Page</i>
59. 74	
60. PAYMENT ON DEATH	74
60.1 Lump Sum Benefits	74
60.2 Pension Benefit	74
DIVISION 3 - RULES OF PENSION PLAN	75
61. MEMBERSHIP AND APPLICATION OF DIVISION	75
61.1 Membership Criteria	75
61.2 Application of this Division	75
62. MEMBERSHIP CLASSIFICATION	75
63. CONTRIBUTIONS	75
64. PENSION PAYMENT AND PENSION ACCOUNT	75
64.1 Application to Convert to Pension	75
64.2 Establishment of Pension Account	75
64.3 Operation of Pension Account	76
64.4 Segregation of Pension Assets	77
64.5 Pension Account Limitation	77
64.6 Pension Increase	77
64.7 Nominated Reversionary Beneficiary	78
64.8 Reversionary Beneficiary	78
64.9 Death of Pensioner	78
64.10 Pensions may be paid in other forms	78
64.11 Trustee may change Pension Terms	78
65. ALLOCATED PENSION	79
65.1 Method of Payment and Security	79
66. MARKET-LINKED PENSION	79
67. COMMUTATION OF PENSION	83
67.1 Conditions of Commutation	83
67.2 Payment of Lump Sum Benefit	83
67.3 Adjustment of Pension following the Commutation	84
DIVISION 4 – RULES OF ACCOUNT BASED PENSION PLAN	85
68. MEMBERSHIP AND APPLICATION OF DIVISION	85
69. MEMBERSHIP CLASSIFICATION	85
70. CONTRIBUTIONS	85
71. PENSION PAYMENT AND PENSION ACCOUNT	85
71.1 Application to Convert to Pension	85

TABLE OF CONTENTS (continued)

<i>Clause</i>		<i>Page</i>
71.2	Establishment of Pension Account	85
71.3	Operation of Pension Account	86
71.4	Segregation of Pension Assets	87
71.5	Pension Account Limitation	87
71.6	Pension increase	87
71.7	Nominated Reversionary Beneficiary	88
71.8	Reversionary Beneficiary	88
71.9	Death Benefits paid as a Pension	88
72.	ACCOUNT BASED PENSION	88
73.	TRANSITION TO RETIREMENT INCOME STREAM AT PRESERVATION AGE	89
	SCHEDULE 1 - MYSUPER RULES	91
74.	AGE COHORTS	91
75.	LARGE EMPLOYERS	91

SECTION 1

MANAGEMENT AND ADMINISTRATION

PART 1

1. INTERPRETATION - DEFINITIONS

In this Deed and Rules unless the context otherwise requires:

Account means the accounts which comprise the Accumulation Accounts or Pension Account;

Accrued Default Amount has the same meaning as in the Relevant law;

Accumulation Accounts means the accounts established on behalf of each Member or Beneficiary as described in Clause 9;

Actuary means the actuary (if any) for the time being appointed pursuant to this Deed;

Account Based Pension means a Pension payable in accordance with Rule 70 of Division 4;

Administrator means the Manager or other organisation appointed as Administrator of the Plan in accordance with Clause 17.2;

AFS Licence means an Australian Financial Services Licence;

Allocated Pension means a pension payable in accordance with Rule 65 of Division 3;

Annuity means an annuity as defined for the purposes of the Relevant Law;

Appointor means the Western Australian Local Government Association (**WALGA**), the Australian Municipal Administration Clerical and Services Union, Western Australian Clerical Services Branch (**ASU**), and the Western Australian Shire Council, Municipal Road Boards, Health Boards, Parks, Cemeteries and Racecourse, Public Authorities, Water Board Union (**LGRCEU**) and their successors (if any);

Approved Benefit Arrangement means a fund or benefit arrangement including without limitation another Complying Superannuation Plan, an Approved Deposit Fund, Retirement Savings Account and an Annuity arrangement into which or from which assets can be transferred into or from the Plan without causing the Plan to be in breach of or to fail to comply with the Relevant Law and includes an Eligible Rollover Fund;

Approved Deposit Fund in relation to a year of income means a fund which is a complying Approved Deposit Fund in accordance with the Tax Act;

Auditor means the auditor for the time being appointed under Clause 17.1 of this Deed and approved under the Relevant Law;

Badged Division means any Division established under Clause 3.9;

Beneficiary means a person presently and absolutely entitled to receive a Benefit at the relevant time which shall include a Pensioner;

Benefit means any amount which is payable by the Trustee out of the Plan in accordance with this Deed to or in respect of a Member;

Benefit Entitlement means any amount held in the Plan which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it shall include a contingent right to payment of an amount;

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment to be made;

Child in relation to a Member or former Member includes:

- (a) an adopted child, a step child or an ex nuptial child of the member of former member; and
- (b) a child of the person's Spouse; and
- (c) someone who is a child of the person within the meaning of the Family Law Act 1975

[amended 01/2009].

Choice Product has the same meaning as in the Relevant Law;

Commencement Date means in respect of this Deed means 21 March 1990;

Complying Superannuation Fund in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Relevant Law;

Constitutional Corporation has the same meaning as defined for the purposes of the Relevant Law;

Contributions means gross payments, deposits or contributions including, Mandated Employer Contributions, Superannuation lump Sums to the Plan by Members, Spouses of Eligible Persons or Members and Employers in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those Contributions and includes a Government Co-contribution;

Contributions Splitting Superannuation Benefit has the same meaning as under the Relevant Law.

Custodian means a company appointed as custodian of the Plan in accordance with Clause 17.4 and Sub-Custodian shall have a corresponding meaning;

Deed means this Deed and any Rules made under this Deed;

Death Benefit Notice means a notice given by the Member to the Trustee which in the opinion of the Trustee meets the requirements of the Relevant Law and requires the Trustee to provide any Benefits in respect of the Member after the Member's death to a person or persons specified in the notice, being the Legal Personal Representative, Reversionary Beneficiary and/or a Dependant or Dependents of the Member;

Dependant in relation to a Member means:

- (a) the Spouse of the Member;
- (b) the Child of the Member;
- (c) any person who, in the opinion of the Trustee, is at the relevant time wholly or partially financially dependant on the Member; or
- (d) any other person who in the opinion of the Trustee is or was a dependant of the Member at the relevant time within the meaning of that term in the Relevant Law;

Directors means the directors or board of management for the time being of the Trustee, and **Director** has a corresponding meaning;

Directed Termination Payment has the same meaning as under the Relevant Law;

Disclosure Document means any document issued by the Trustee offering participation or Membership in a Division in accordance with the requirements of the Relevant Law;

Eligible Person means any person who is permitted to become a Member of the Plan pursuant to this Deed and shall include a Spouse of a person, Eligible Person or a Member; [amended 01/2009]

Eligible Rollover Fund has the same meaning as contained in Part 24 of the SIS Act;

Employee means a person in the employment of an Employer and who is:

- (a) a director or secretary (in the case of a corporation) of that Employer; or
- (b) classified by the Employer as an Employee for the purposes of this Deed;
- (c) a person who is an Employee of the Employer for the purposes of the *Guarantee Act*.

Employer means a company (including any Local Government Council, state or federal government department, state or federal government authority, body corporate), person, firm or any other employer of an Employee or of a Member and in relation to an Employee or Member means the Employer of such Employee or Member;

Equalisation Account means the account or accounts established pursuant to Clause 9.5;

Financial Assistance means financial assistance granted to the Plan under Part 23 of the SIS Act;

Financial Year means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee shall determine;

Flagging Order has the same meaning as in the *Family Act 1975*;

Flagging Lifting Agreement has the same meaning as in the *Family Act 1975*;

FLA Eligible Person means:

- (a) the Member;
- (b) the Spouse of the Member;
- (c) a person who enters into a Superannuation Agreement with the Member;

Forfeiture Account means the account established pursuant to Clause 23.3;

Full-Time Gainful Employment in relation to a Member means a Member who is Gainfully Employed for at least 30 hours per week or on a full-time basis within the meaning of the Relevant Law;

Gainful Employment in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Relevant Law and Gainfully Employed shall have a corresponding meaning;

Government Co-contribution means a payment made to a Member in accordance with the *Superannuation (Government Co-Contribution for Low-Income Earners) Act 2003*.

GST means any goods and services tax payable by the Plan pursuant to *A New Tax System (Goods and Services Tax) Act 1999*;

Guarantee Act means the *Superannuation Guarantee (Administration) Act 1992* and any regulations made under that Act;

Industrial Award has the same meaning as in the Guarantee Act;

Insurer means any insurer with whom the Trustee effects a Policy or Policies;

Insured Benefit means the amount (if any) payable on the Member's death, or Total and Permanent Disablement or Temporary Total Disablement under any Policy of insurance maintained by the Trustee for that Member;

Internal Roll Over means the transfer pursuant to Clause 20.3 of a Member's Benefit Entitlement from one Division of the Plan to another Division of the Plan

Investment Fee has the same meaning as in the Relevant Law;

Investment Manager means a person appointed as an Investment Manager of the Plan in accordance with Clause 17.3;

Large Employer means an Employer listed in Schedule 1 who also meets the definition of "large employer" under the Relevant Law;

Legal Personal Representative shall have the meaning attributed to it in section 10 of the SIS Act;

Levy includes a levy payable by the Plan to the Regulator in accordance with the *Superannuation Supervisory Levy Act 1998*, the *Superannuation (Financial Assistance Levy) Act 1993* and any other legislation or regulations which impose a levy or levies on the Plan;

Local Government Council means a municipal council that is a Participating Employer to the Plan;

Lost Member means a Member who is a lost member pursuant to the Relevant Law;

Mandated Employer Contributions has the same meaning as set out in Regulation 5.01(1) of the SIS Regulations;

Market-Linked Pension means a pension payable in accordance with Rule 64 of Division 3;

Maximum Splittable Amount means separately 85% of the amount of the Taxed Splittable Contributions and 100% of the amount of Untaxed Splittable Contributions or such other amounts as stipulated in the Relevant Law;

Member means an Eligible Person who has been accepted as a Member of a Division of the Plan under Clause 6.5 and who has not ceased to be a Member under Clause 6.9 and **Membership** shall mean Membership of a Division of the Plan;

MySuper Product has the same meaning as in the Relevant Law;

Nominated Dependant means a person nominated in writing by a Member to the Trustee as the nominated beneficiary but does not include any person who has been specified in a Death Benefit Notice;

Non-Member Spouse has the same meaning as in the SIS Regulations;

Non-Preserved Amount means an amount including a Roll Over Payment payable to or in respect of a Member or Beneficiary which is not subject to any cashing restrictions under Part 6 of the SIS Regulations at the time of payment;

Normal Retirement Age means the age of 65 years or such other age being not less than the Preservation Age as is acceptable to or required by the Relevant Law and as the Trustee with the consent of the Employer of that Member shall determine;

No-TFN Contributions Income has the same meaning as in the Relevant Law;

Officer means a Director, secretary or executive officer of the Trustee;

Operational Risk Financial Requirement has the same meaning as in the Relevant Law;

Operational Risk Reserve has the same meaning as in the Relevant Law;

Participating Employer means any person, firm or corporation that by agreement with the Trustee is admitted to participation in the Plan under Clause 6.1;

Part-Time Equivalent Level in relation to a Member means during the relevant financial year, the Member was Gainfully Employed for at least 240 hours during the financial year that ended on the last occurring 30 June;

Part-Time Gainful Employment in relation to a Member means a Member who is employed for at least 10 hours per week but less than 30 hours per week or a Member who fulfils any other requirements specified in the Relevant Law;

Payment Flag has the same meaning as in the *Family Law Act 1975*;

Payment Split has the same meaning as in the *Family Law Act 1975*;

Pension means as the context requires:

- (a) a Benefit payable by instalment out of the Pension Account of a Member or Beneficiary;
- (b) the instalment payable to or in respect of a Pensioner pursuant to Rule 65 or Rule 66 of Division 3;

Pension Account means the account established in respect of a Pensioner in accordance with Rule 62.2 of Division 3;

Pensioner means a Member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of a Pension;

Plan means the Plan known as the **WA Local Government Superannuation Plan** established by Deed dated 21 March 1990 as varied from time to time;

Plan Earning Rates means the earning rates for the Plan (which may be negative) determined under Clause 9.4(3) after taking into account such provisions or reserves for future contingencies as the Trustee shall consider reasonable;

Plan Year means a period of twelve months ending on 30 June, or such other period of twelve months ending on such other date as the Trustee may determine from time to time;

Policy means any policy of insurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy with an Insurer and includes any policy covering any two or more of the foregoing risks and it further includes any policy which provides that Insured Benefits shall be payable to the Trustee on the death or disablement of a Member;

Portability Request means a request made to the Trustee by a Member in writing to transfer an amount of a Member's Benefit to an Approved Benefit Arrangement in accordance with the Relevant Law

Preservation Age has the same meaning as in the Relevant Law;

Preserved Payment means a payment made to the Plan by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be preserved as provided for in this Deed in order for the Plan to be a Complying Superannuation Fund and **Preserved Payment Benefit** means a Benefit arising from a Preserved Payment;

Regulator means, as the case requires, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office, or such other regulatory body as shall have responsibility for administration and regulation of superannuation;

Relative in relation to a Member or former Member means any of the following, namely:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of the Spouse of the Member; and
- (b) the Spouse of any person specified in paragraph (a);

Release Authority means a documented authority issued by the Commissioner of Taxation stating the amount of excess contributions tax that a Member of the Plan is liable to pay;

Relevant Law means any requirement under the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Superannuation (Resolution of Complaints) Act*, the *Tax Act*, the *Family Act 1975*, the *Corporations Act 2001* and the *Corporations Regulations 2001* and any other present or future legislation which the Trustee must comply with in order for the Plan:

- (a) to qualify for concessional Taxation treatment as a Complying Superannuation Fund; or
- (b) to meet any other requirements of the Regulator,
- (c) and includes any proposed requirements, rulings, announcement or obligations which the Trustee believes will have effect retrospectively;

Retirement Savings Account has the meaning assigned to that expression in Section 8 of the *Retirement Savings Account Act 1997*;

Retires from Employment means actual retirement by a Member from employment by the Employer or retirement as defined by the Relevant Law for the payment of Benefits;

Retires from Gainful Employment means actual retirement by a Member from Gainful Employment or retirement as defined for the purposes of the Relevant Law to enable the payment of Benefits;

Reversionary Beneficiary means a Dependant nominated by a Pensioner and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Pensioner;

Reversionary Pension means a Pension paid to a Reversionary Beneficiary;

Roll Over Payment means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances which satisfy the Relevant Law to or from any Approved Benefit Arrangement and shall include an Directed Termination Payment by an Employer in consequence of the termination of the employment of a Member and either a capital gains tax exempt amount or a rollover superannuation benefit in relation to a Member under the Tax Act;

RSA Regulations means the *Retirement Savings Account Regulations 1997*;

RSE Licence has the same meaning as in the Relevant Law;

Rules means the rules of each Division of the Plan;

Salary in respect to a Category A, B or C Member of Division 1 means that Member's wage or salary (calculated annually) received from the Participating Employer including shift penalty allowances, location allowances and any other all purpose allowance or payment considered by the Trustee to be of a permanent nature but excluding commission, overtime amounts (unless the Trustee determines otherwise) or for other special services or by way of a bonus;

Service means continuous service with an Employer and for the purpose of this definition an Employee's service shall not cease to be continuous by reason of a transfer from the service of one employer to that of another employer where each of the employers concerned is one of a group of employers consisting of an Employer and subsidiary and associated Employers;

Shortfall Component has the same meaning as contained in Section 64 of the Guarantee Act;

SIS Act means the *Superannuation Industry (Supervision) Act 1993*;

SIS Regulations means the *Superannuation Industry (Supervision) Regulations 1994*;

Splittable Contribution means a Contribution to the Plan or other amounts stipulated under the Relevant Law but does not include:

- (a) an amount that has been rolled over or transferred to the Plan;
- (b) any other amounts as specified by the Relevant Law.

Splittable Payment has the same meaning as in the *Family Law Act 1975*;

Splitting Order has the same meaning as in the *Family Law Act 1975*;

Spouse includes:

- (a) in relation to a person:
 - (i) another (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory for the purposes of section 22B of the Acts Interpretation Act 1901; and
 - (ii) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple;

PROVIDED THAT where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable to the Spouse is to be divided between them; or

- (b) for the purposes of Clauses 35 to 39, a person who is legally married to the Member or that person otherwise being presumed under the Family Law Act 1975 to be a spouse of the Member;

[amended 01/2009]

Successor Fund has the same meaning as contained in Regulation 1.03(1) of the SIS Regulations;

Superannuation Agreement has the same meaning as in the *Family Act 1975*;

Superannuation Lump sum has the same meaning as in the Relevant Law.

Tax Act means the *Income Tax Assessment Acts 1936 and 1997* (as amended) and any regulations issued under those Acts;

Taxation includes income tax, any surcharge or other amount of whatever description levied on the Plan, the Trustee, any Member, Former Member or Beneficiary pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including provisional or advance payments required under that legislation), capital gains tax, tax on Superannuation Lump Sums, payroll tax, land tax, stamp duty, GST and any other taxes or duties of whatever description paid or payable by the Trustee on behalf of the Plan or, where applicable, by any Member, former Member or Beneficiary;

Taxed Splittable Contribution is a Contribution on or before 5 April 2007 to the Plan which is taxable under the Tax Act or a Contribution that would be taxable under that section but for the Commonwealth Government's inability to tax the property of a State or an allocated surplus Contribution (as defined in the Relevant Law) or such other amounts stipulated by the Relevant Law;

Temporary Total Disablement has the same meaning as contained in any Policy effected by the Trustee with an Insurer for this purpose in respect of the Member and in force at the time of the Temporary Total Disablement of the Member and the expression **Temporarily Totally Disabled** shall have a corresponding meaning;

Total and Permanent Disablement has the same meaning as contained in any Policy effected by the Trustee with an Insurer in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member and the expression **Totally and Permanently Disabled** shall have a corresponding meaning;

Transition to Retirement Income Stream means a Pension payable in accordance with Rule 71 of Division 4;

Tribunal means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993*;

Trustee means the Trustee or Trustees for the time being of the Plan whether original, additional or substituted which are appointed in accordance with Clause 11 of this Deed;

Unclaimed Benefits means those Benefits described as unclaimed money under Part 22 of the SIS Act;

Untaxed Splittable Contribution is a Contribution made on or before 5 April 2007 to the Plan which is not a taxable Contribution under the Tax Act or such other amounts stipulated by the Relevant Law;

Withdrawal Benefit means the minimum Benefit which must be paid to a Member on the Member's withdrawal from the Plan as prescribed by the Relevant Law.

2. INTERPRETATION - GENERAL

2.1 Plural of words

In this Deed, unless inconsistent with the subject matter or context, words importing the singular number shall include the plural number and vice versa.

2.2 Headings to Clauses

The headings in this Deed are for convenience only and shall not affect the interpretation of this Deed.

2.3 Defined words

For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

2.4 Statutory enactments

References to any statutory enactment shall be construed as references to that enactment as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for such statutory enactment. Any reference in this Deed to a provision of an enactment shall include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

2.5 Plan Subject to Relevant Law

This Deed shall be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Deed to the extent that it imposes covenants or obligations on the Trustee in order for the Plan to qualify for concessional Taxation treatment or to satisfy any other requirements of the Regulator and this Deed shall be further read and construed on the basis that:

- (1) where there is any inconsistency between a provision in this Deed and a provision under the Relevant Law the latter shall prevail to the extent of the inconsistency;
- (2) in the event of any doubt arising as to the effect of a Relevant Law or if there is an inconsistency between the Relevant Law and a provision of this Deed, the decision of the Trustee shall be final,

PROVIDED THAT this Deed shall not be so read or construed and no such provision of the Relevant Law shall be so incorporated if to do so would constitute a breach of the power granted by Clause 30 to add to, amend, alter, modify, rescind or vary the provisions of this Deed.

2.6 Requirements of Regulator

Any references to any requirements, consents or approvals being required to be given by the Regulator or for the purposes of satisfying the Relevant Law shall mean requirements, consents or approvals of the Regulator or under the Relevant Law.

2.7 **Superannuation Guarantee Legislation**

The Trustee shall administer the Plan in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and shall provide all such certificates, reports and other information as shall be required by the Guarantee Act.

2.8 **Australian Currency**

All Benefits shall be expressed and paid in Australian currency unless otherwise specifically agreed between the Member and the Trustee.

PART 2

3. **CONFIRMATION**

3.1 **Maintenance of Plan**

The Trustee agrees to maintain the Plan known as the **WA Local Government Superannuation Plan** which was established by trust deed dated 21 March 1990.

3.2 **Assets of the Plan**

The assets of the Plan shall continue to be vested in the Trustee upon trust or apply the same in the manner set forth in this Deed.

3.3 **Sections and Divisions within the Plan**

The Trustee may from time to time establish and vary Sections and Divisions of the Plan and the Trustee may acquire certain assets or determine that certain assets are held in respect of a particular Division or in respect of particular Employers or Members of a particular Division.

3.4 **Allocation of Assets**

If the Trustee acquires certain assets or determines that certain assets are held in respect of a particular Division or in respect of particular Employers or Members of a Division then those assets shall only be available for the purposes of that Division or those Employers or Members or in respect of liabilities of that Division or in relation to those Employers or Members as the case may be.

3.5 **Divisions**

The Plan is divided into the following Divisions:

- (1) Division 1 - WA Local Government Superannuation Plan - Employer Sponsored Plan;
- (2) Division 2 - WA Local Government Superannuation Plan – Personal Plan;
- (3) Division 3 - WA Local Government Superannuation Plan - Pension Plan;
- (4) Division 4 – WA Local Government Superannuation Plan – Account Based Pension Plan.

3.6 Rules

The Trustee may make Rules governing each Division or in respect of part of a Division or particular Employers or Members of a Division and those Rules may be amended or varied in the same manner as this Deed may be amended or varied.

The provisions of Section 1 shall prevail over the Rules in the respective Divisions unless the Rules specify otherwise.

3.7 Application of Assets

The assets of the Plan are pooled (with pension assets segregated for tax purposes) and may be used to meet the liabilities of the Divisions. Should the Trustee later decide that the assets comprised in each Division will only be applied for the purpose of that particular Division then they will not be available to meet any liabilities in respect of the other Divisions of the Plan.

3.8 Constitution of New Division

The Trustee may establish other Divisions of the Plan by executing a document (**Memorandum of Commencement**) constituting the new Division of the Plan containing the following particulars:

- (1) the name of the Division;
- (2) the Rules for that Division;
- (3) the pool of assets for which benefits may be provided; and
- (4) any other matters the Trustee determines, and

that Memorandum of Commencement shall take effect upon the date stated in the Memorandum of Commencement.

3.9 Badged Divisions

- (1) The Trustee may enter into arrangements with third parties (**Sponsors**) for the offer by the Sponsor of participation in a Division (the **Badged Division**).
- (2) The Disclosure Document in respect of a Badged Division may, with the approval of the Trustee, carry the name of the Sponsor or name chosen by the Sponsor and approved by the Trustee for the Badged Division other than the name given to the relevant Division by this Deed.
- (3) The provisions of this Deed apply to a Badged Division in the same manner as they apply to any other Division established under this Deed, unless the Rules relating to that Division expressly provide otherwise.

4. GENERAL PROVISIONS

4.1 Employer's powers not prejudiced

Nothing in this 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 an Employer and its Employee. The existence or cessation of any actual or prospective or possible Benefit under the Plan shall not be grounds for claiming or increasing damages in any action brought against an Employer in respect of any termination of employment or otherwise.

4.2 **Exercise of Trustee's rights**

All powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this Deed may be fully and effectively exercised, made, done or performed by or on behalf of the Trustee by resolution of its Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to so act on their behalf PROVIDED THAT any requirements of the Relevant Law are satisfied.

4.3 **Rights of Members**

The provisions of this Deed shall not in any way affect the right of a Member or the personal representative of a Member or any other person to claim compensation or damages under any Act of Parliament or at common law or in circumstances where the Member is injured or dies as a result of an event arising out of or in the course of the employment of the Member.

4.4 **Inquiries, Complaints and Disputes**

- (1) If required by the Relevant Law, the Trustee shall ensure that there are in force arrangements to deal with inquiries or complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Relevant Law.
- (2) Subject to the Trustee's right to determine in its discretion to appeal against any decision of a Court or the Tribunal, the Trustee shall ensure that it implements any decision of a Court or Tribunal as required by that Court or Tribunal.

4.5 **Benefits Secured**

The rights of the Members and their Dependants to receive Benefits payable under this Deed shall be fully secured within the meaning of the Relevant Law.

4.6 **Members Bound by Deed**

The terms and conditions of this Deed are binding on the Trustee and Member and all persons claiming through them respectively as if each Member had severally been a party to this Deed.

4.7 **Service by the Trustee**

- (1) Any notice or other document to be served by the Trustee upon any Participating Employer or upon any Member shall be deemed duly served if delivered personally or sent by prepaid post addressed to the address last known to the Trustee.
- (2) A notice sent by post shall be deemed to have been served on the date when in the ordinary course of post it would normally have been delivered at such address.

- (3) Where at least one (1) notice has been returned and unclaimed from the last known address of a Member and the Trustee is satisfied on reasonable grounds that the address is incorrect or no address for the Member can be obtained and (in either case) the Trustee has taken reasonable steps to locate the Member but has been unable to do so then the Trustee shall not be required to serve the notice unless and until the Trustee later becomes aware of the address or location of the Member.

4.8 Service on the Trustee

Any notice or other document to be served on or required to be given to the Trustee shall be deemed to be duly served or received if delivered or sent by prepaid letter post addressed to the Trustee at its registered office or addressed to or in care of the Administrator to such address.

4.9 Relevant Law to Prevail

Notwithstanding any of the provisions of this Clause, the Trustee may apply and administer the Deed and Rules in a manner and to the extent that they comply with the requirements of the Relevant Law.

5. PROPER LAW

This Deed shall be governed and construed and shall take effect in accordance with the laws of Western Australia. The Trustee, Members, Beneficiaries and Employers shall accept the jurisdiction of the Courts of that State.

PART 3

6. EMPLOYERS AND MEMBERS

6.1 Employer Application for Membership

An Employer who is eligible under the Rules of a Division to participate in that Division may apply for participation in that Division by completing and signing an application, including benefit specification (if any) in the form presented by the Trustee and attached to a Disclosure Document and forwarding it to the Trustee.

6.2 Acceptance of Application by Employer

On acceptance by the Trustee of an application by an Employer, the Employer shall execute such agreements or acknowledgements as the Trustee may require in such form as the Trustee and the Employer agree and upon the date agreed by the Trustee and Employer or, if there is no such date, on acceptance of the duly executed application by the Trustee, the Employer shall become a Participating Employer and this Deed together with that application (as amended in accordance with this Deed) shall become binding on the Employer and that Employer's employees.

- (a) Trustee discretion over Employer Membership

Notwithstanding anything in this Deed or the Rules of any Division of the Trustee may in its absolute discretion determine that a

person shall be entitled to participate in the Plan as an Employer and make contributions to the Plan without requiring that person to make an application in accordance with this clause 6 or the Rules of any relevant Division.”

6.3 Application for Membership

- (1) A Participating Employer shall nominate to the Trustee those of its Employees as it shall in its absolute discretion select to become Members of the Plan.
- (2) The Trustee may at its sole discretion determine to admit an applicant who is a Spouse of a Member to Membership of the Plan. An applicant who is admitted to the Plan pursuant to this Clause 6.3(1) shall be required to complete an application for Membership in accordance with Clause 6.3(3).
- (3) A person who is eligible under the Rules of a Division to participate in that Division may apply for participation in that Division by;
 - (a) completing and signing an application, including the selected benefit specification (if any), in the form prescribed by the Trustee from time to time and attached to a disclosure document;
 - (b) lodging the application at the registered office of the Trustee or at any other places at which the Trustee accepts applications.

6.4 Disclosure Document

The Trustee may offer beneficial interest in the Plan or a Division only by way of a Disclosure Document which contains such information, documents, statements and reports in relation to the Plan or to the Division in which beneficial interests are offered as a Relevant Law requires to be given to prospective participants in the Division.

6.5 Admission to Membership

- (1) Upon receipt of an application for Membership, the Trustee may determine to admit the Employee or Eligible Person to Membership of the Plan.
- (2) The Member shall be deemed to have joined the Plan on a date determined by the Trustee or, where the Trustee makes no such determination, on the date on which the completed application for Membership is received or is deemed to have been received PROVIDED THAT the Participating Employer may, with the consent of the Trustee, or where there is no Participating Employer in relation to the Member, the Trustee may grant such additional period of Membership as the Participating Employer or the Trustee may determine.
- (3) Subject to any other conditions which may be applied under the provisions of this Deed, the Trustee may impose such conditions on an applicants admission and the rights and duties of the Member as it shall determine and may limit and impose conditions upon Benefits as it sees fit and the Trustee may remove or vary all or any of the aforesaid conditions at any time.

- (4) Upon admission to Membership of the Plan, the Member shall be bound by this Deed in all respects as if the Member were an original party to the Deed.

6.6 Members and Beneficiaries to Provide Information

- (1) Each applicant for Membership and any Beneficiary shall when requested by the Trustee furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Plan, and shall submit to medical examinations as required by the Trustee by a registered medical practitioner who is acceptable to the Trustee.
- (2) Where a Member or Beneficiary fails to comply with the provisions of this Clause, the Trustee may suspend the collection of any Contributions in respect of that Member or withhold any Benefits in respect of that Member or Beneficiary or impose such other conditions on the continued Membership of that Member or on the Beneficiary as the Trustee shall deem appropriate.

6.7 Incorrect or Misleading Information

Where a Member or Beneficiary furnishes information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of a Member or Beneficiary and the information supplied is incorrect or misleading or any relevant information is deliberately withheld the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.

6.8 Information re Age

A Member shall inform the Trustee as soon as practicable after the Member:

- (1) ceases Part Time Gainful Employment or Full-Time Gainful Employment after age 65 years; or
- (2) ceases to be Gainfully Employed at a Part-Time Equivalent Level after age 75 years.

6.9 Cessation of Membership

A person shall cease to be a Member of the Plan upon the earliest to occur of the following:

- (1) the date upon which payment of all the Member's Benefits is made to the Member or to an Approved Benefit Arrangement on behalf of the Member;
- (2) the death of the Member;
- (3) the date on which Unclaimed Benefits in respect of a Member are paid to the Regulator;
- (4) the date when Benefits payable to or on behalf of a Member cease to be payable; or
- (5) such date as the Trustee shall reasonably determine,

PROVIDED THAT where a Policy providing disablement benefits has been effected in respect of the Member, that Member shall remain a Member for such period following resignation, dismissal or retirement from Gainful Employment as the Trustee shall determine.

6.10 Information on Employers and Members

The Trustee shall keep the following information on its administration system about all Employers and Members as required by the Relevant Law.

- (1) the name and address of each Employer and Member;
- (2) the date upon which the name of each Employer and Member became an Employer or Member as the case may be;
- (3) the amount of the Contributions made by each Member or on behalf of each Member;
- (4) the amount of the Contributions made by an Employer in respect of each Member;
- (5) the date upon which any Employer ceases to be an Employer, the date upon which any Member ceases to be a Member; and
- (6) such other matters and things as the Trustee considers desirable.

6.11 Inspection of Information

Any Employer or Member shall be entitled to inspect any entry in respect of that Employer or Member in the administration system at any time (if still available) during business hours of the Trustee, at the registered office of the Trustee. The Trustee may determine to charge a reasonable fee for that information.

6.12 Termination of Participating Employer's Contributions

(1) Circumstances of Cessation

A Participating Employer shall cease to be a Participating Employer for the purposes of the Plan and Contributions to the Plan shall terminate from that Participating Employer on the date that:

- (a) a deed of appointment placing the Participating Employer in receivership or under official management is executed by the appointor of that receiver or manager;
- (b) a resolution of its shareholders or an order of a Court places the Participating Employer in liquidation; or
- (c) the Participating Employer permanently terminates its Contributions to the Plan by notice in writing to the Trustee.

(2) Exercise of Powers of Participating Employer

If the Participating Employer ceases to be a Participating Employer as a result of the provisions of Clause 6.12(1) above, the powers and discretions vested in the Participating Employer under this Deed shall immediately

terminate and shall then only be exercisable by such of the Participating Employers as the Trustee shall from time to time determine or, in the absence of any such determination, by the Trustee.

(3) Employees not to be Admitted

Subject to Clause 34.3, no Employee of a Participating Employer shall be admitted as a Member where the Participating Employer's Contributions in respect of its Employees have been terminated under Clause 6.12(1).

(4) Benefits Held for Members

In the event that Contributions by a Participating Employer cease in the circumstances described in Clause 6.12(1) then:

- (a) all money not already allocated shall be allocated by the Trustee to the Members Accumulation Accounts in such shares and proportions as the Trustee shall direct.
- (b) proceeds or other sums held, received or allocated by the Trustee in respect of a particular Member shall be held in trust by the Trustee and shall, subject to the provisions of this Deed and the Relevant Law transferred to Division 2 or unless nominated in writing by the Member, be transferred to the trustees of another Approved Benefit Arrangement.

(5) Partial Termination

If the Participating Employer terminates its Contributions to the Plan in respect of some or all of the Members for whom it has been contributing, the Trustee shall unless another Participating Employer agrees to continue the Contributions in respect of those Members within the provisions of this Deed, deal with all moneys relating to those Members as specified in Clause 6.12(4).

6.13 Transfer of Participating Employer's Business

If a Participating Employer (the Former Employer) is amalgamated with or disposes of its undertaking to another Participating Employer (the New Employer), Contributions shall be deemed not to have terminated and the Members who are Employees of the Former Employer shall become Employees of the New Employer and the New Employer may make future Contributions in respect of those Members.

6.14 Reconstruction or Amalgamation of a Participating Employer

If a Participating Employer is reconstructed, goes into liquidation for the purpose of reconstruction, is merged or amalgamated with another employer or disposes of all or the majority of its undertaking, the Trustee may deal with the interests of Members in all or any of the following ways:

(1) Deed of Adoption

Enter into a deed of adoption with its successor as a Participating Employer with the object of carrying on a Complying Superannuation Fund either under this Deed or any similar deed or rules on such terms and conditions

as the Trustee considers to be reasonable and which protects the interests of the Members; or

(2) **Transfer Assets**

Retain the assets and transfer the Members to Division 2 or transfer some or all of the assets of the Plan representing the assets applicable to Members who were Employees of the former Participating Employer to a Complying Superannuation Fund conducted by a new employer in accordance with and subject to the provisions of Clause 20 in respect of some or all Members or former Members; or

(3) **Continue Plan**

Continue to operate the Plan for the benefit of any Members still employed by the former Participating Employer.

7. MEMBERSHIP NOTIFICATION REQUIREMENTS

7.1 Notice to New Members

As soon as practicable before or after the admission of a person as a Member of the Plan, the Trustee shall arrange for such Member to be given a written statement containing:

- (1) confirmation of acceptance of Membership detailing date of admission;
- (2) a summary of Benefits to which the Member will be entitled and the method of determining those benefits and any conditions relating to those Benefits; and
- (3) all other information and details relating to the Plan as is required to be provided by the Relevant Law.

7.2 Disclosure and Reporting Requirements

The Trustee shall arrange for Members, former Members and Beneficiaries to be provided with information in writing, or copies of accounts, records or documents of the Plan as required by the Relevant Law on an annual basis and on other occasions and in such manner as shall be required by the Relevant Law.

7.3 Notice to Former Member

As soon as practicable after a person ceases to be a Member of the Plan, the Trustee shall arrange for such former Member or the Legal Personal Representative of the former Member to be given a written statement containing such information and details relating to the Benefits of the former Member as is required to be provided by the Relevant Law.

7.4 Disclosure Limitation

No Member or Dependant of a Member shall be entitled to obtain information in respect of any details of the operation of the Plan or on any matter which may relate to the conduct of the Plan which in the opinion of the Trustee would be inappropriate to disclose other than as is provided for by this Clause.

7.5 **Inspection of Trust Deed and other Documents**

A copy of this Deed and any other documents as required by the Relevant Law shall be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary and unless otherwise required by the Relevant Law, it shall be sufficient for the purposes of this Clause to make a copy of this Deed or such documents available to the Member or Beneficiary for inspection at the office of the Trustee during hours when that office or business is open.

7.6 **Nominated Dependant**

A Member may upon admission and from time to time thereafter in a manner approved by the Trustee notify the Trustee of:

- (1) the names and addresses of any Dependants to whom the person wishes any Benefit payable upon the person's death to be paid;
- (2) the proportions and manner in which the person wishes those Benefits to be paid;
- (3) the nomination:
 - (a) may be varied or replaced from time to time in a manner approved by the Trustee; and
 - (b) it is not binding upon the Trustee but the Trustee may consider the nomination when exercising any of its discretions in respect of the Person.

7.7 **Sub-Plans**

- (1) The Trustee may in respect of any Division determine to make a sub-plan for the Division (Sub-Plan).
- (2) In determining whether to make a Sub-Plan, the Trustee must have regard to all relevant matters, including whether there is a common factor in a segment of the Division (for example where there is a group of Members of the Division who have the same Employer).

PART 4

8. **THE PLAN**

8.1 **Plan Vested in Trustee**

The Plan shall be vested in the Trustee and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

8.2 **Plan Assets**

The gross assets of the Plan shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of this Deed and shall include:

- (1) the amount, if any, standing or transferred to the credit of the Plan (including any amounts standing to the credit of any accounts established pursuant to Clause 9 of this Deed) at or after the date from which this Deed comes into effect;
- (2) such Contributions (if any) as the Members shall make to the Plan at any time;
- (3) such Contributions as an Employer makes to the Plan at any time;
- (4) interest, dividends and distributions of income arising from any investment and the accumulation of that income;
- (5) profits and other benefits arising from any investment and the accumulation of those profits;
- (6) the proceeds (including bonuses) of any Policy held by the Plan;
- (7) moneys, investments and other property transferred to the Plan as a Roll Over Payment;
- (8) such monies and assets paid or transferred to the Trustee pursuant to Clause 21 of this Deed;
- (9) such Shortfall Components as are received by the Plan;
- (10) any Financial Assistance received by the Plan; and
- (11) such other Contributions permitted under this Deed and the Relevant Law.

9. PLAN ACCOUNTS

9.1 Accumulation Accounts

The Trustee must establish an Accumulation Account in respect of each Member or Beneficiary (except for Pensioner Members):

9.2 Credits to Accumulation Accounts

The following amounts shall be credited to the appropriate Accumulation Account:

- (1) any amount paid into the Plan in respect of the Member as a transfer or a Roll Over Payment which the Trustee considers it appropriate to credit;
- (2) any Contributions made in respect of the Member by the Member or the Members Spouse;
- (3) any Contributions made in respect of the Member or Beneficiary by the Employer;
- (4) the proceeds of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary and paid to the Trustee which the Trustee considers it appropriate to credit;

- (5) such positive earnings as are determined by the Trustee and transferred from the Administration Account;
- (6) such forfeited amounts as are allocated to but not paid directly to the Member or Beneficiary pursuant to Clause 23.4;
- (7) any amounts transferred from the Pension Account of a Beneficiary;
- (8) any Shortfall Component paid in respect of the Member;
- (9) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (10) The benefit of any tax offset or rebates obtained by the Plan including in relation to tax previously paid by the Plan on No-TFN Contributions Income in respect of a Member; and
- (11) such other Contributions made in respect of the Member and permitted under this Deed and the Relevant Law; and
- (12) such other amounts as the Trustee shall from time to time determine.

9.3 **Debits to Accumulation Accounts**

The following amounts shall be debited to the appropriate Accumulation Account:

- (1) any amount paid out of the Plan in respect of the Member or Beneficiary as a transfer or a Roll Over Payment which the Trustee considers it appropriate to debit;
- (2) any other Benefit payments made to or in respect of the Member or Beneficiary other than payments from a Pension Account;
- (3) the costs of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary subject to Clause 9.4(2)(d) below;
- (4) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Plan or earnings of the Plan credited to the Accumulation Account or arising as a result of a Roll Over Payment as the Trustee may determine;
- (5) such of the costs, charges and expenses incurred in accordance with Clause 16 or an appropriate portion thereof as the Trustee may determine;
- (6) the amount of any lien exercised pursuant to Clause 15;
- (7) such amount as is forfeited pursuant to Clauses 23.1 or 23.2;
- (8) such negative earnings as shall be determined by the Trustee in accordance with Clauses 9.4, 9.7 or 12.5(5);
- (9) any moneys paid in respect of the Trustee indemnity set out in Clause 15;
- (10) any amount credited to the Pension Account of a Beneficiary;

- (11) any amount paid in satisfaction of a Release Authority given to the Trustee for payment of an excess contributions tax assessment;
- (12) any amount of Levy determined by the Trustee to be appropriate to debit;
- (13) any amount of Taxation attributable to the Member or Beneficiary; and
- (14) such other amounts as the Trustee shall from time to time determine and permitted by the Relevant Law.

9.4 Administration Account

- (1) The Trustee shall establish an Administration Account to which shall, subject to Clause 12.5(5), be credited the following:
 - (a) all income and profits of the Plan each year;
 - (b) credits arising out of adjustments pursuant to Clause 9.6 below;
 - (c) any amount transferred from the Equalisation Accounts pursuant to Clause 9.5 below;
 - (d) the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Account;
 - (e) any Financial Assistance received by the Plan and not credited to an Account;
 - (f) and profits of the Division or the Plan shall include any surplus arising from a valuation undertaken at any time during the year in accordance with Clause 9.7 below.
- (2) The Administration Account shall, subject to Clause 12.5(5), be debited with the following:
 - (a) any loss sustained on the disposal of any investments of the Plan;
 - (b) any costs or charges incurred pursuant to Clause 16 which are not debited to an Account;
 - (c) any debits arising out of adjustments pursuant to Clause 9.6 below;
 - (d) the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Account;
 - (e) any deficiency arising from a valuation undertaken in accordance with Clause 9.7 below;
 - (f) any amount payable or which may become payable by way of Taxation in respect of Contributions, Shortfall Components and income and profits of the Plan which are not debited to an Account as the Trustee determines to be equitable;
 - (g) any amount of Levy payable by the Plan and not debited to an Account;

- (h) any income transferred to the Equalisation Accounts.
- (3) Following the debiting of the Administration Account as specified in Clause 9.4(2), at the end of each Plan Year the Trustee shall determine the Plan Earning Rates.
- (4) Subject to Clause 12.5(5), the amount determined as the earnings of each Division shall be allocated from the Administration Account to each Account in proportion to the amount standing to the credit of that Account at the beginning of the Plan Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the Account since that date.
- (5) Any amount remaining in the Administration Account after distribution of earnings pursuant to Clause 9.4(4) above shall be transferred to an Equalisation Account established under Clause 9.5 below.
- (6) In the event that the Trustee is required to establish Plan Earning Rates in respect of a part of a Plan Year then such interim Plan Earning Rates for that period shall be determined by the Trustee in accordance with the Relevant Law on a basis which the Trustee considers to be equitable. The Trustee shall when required by the Regulator or the Relevant Law notify the Members of the basis of the calculation of the interim Plan Earning Rates.

9.5 Equalisation Accounts

- (1) The Trustee shall have power at any time to establish one or more Equalisation Accounts and may transfer to the credit of an Equalisation Account any amount remaining in the Administration Account under Clause 9.4 above.
- (2) Whilst any moneys are held in the Equalisation Account, they shall not form part of any Accumulation Account or Pension Account and any income earned by the Plan on the moneys held in the Equalisation Accounts shall be credited to the Equalisation Accounts.
- (3) The Equalisation Accounts shall at the discretion of the Trustee be used for the following purposes:
 - (a) to generally give effect to the reserving strategy established by the Trustee to stabilise the investment earnings of the Plan;
 - (b) to provide for such contingencies as the Trustee shall determine;
 - (c) to augment the Plan Earning Rates;
 - (d) to meet any Taxation payments payable by the Plan;
 - (e) to or for the benefit of a Member, Pensioner, Beneficiary or former Member including augmentation of the Accumulation Account or Pension Account on a basis that does not breach the Relevant Law; or
 - (f) for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

9.6 **Adjustment of Accumulation Account or Pension Account**

In determining the amount standing to the credit of an Account at the time a Benefit is calculated or becomes payable, the Trustee shall make such adjustment (up to the date of payment) reflecting the Plan Earning Rates then applying as it shall in its discretion consider equitable and in accordance with the Relevant Law and the Administration Account shall be debited or credited accordingly.

9.7 **Valuation of the Plan**

At the end of each Plan Year or at such other time as the Trustee considers it appropriate or as the Relevant Law shall require the Trustee shall make a valuation of all assets of each Division (including the value of any Policy held by the Plan) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the income Account or the relevant sub-account referred to in Clause 12.5(5) and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of each Division (if applicable) and of the Plan.

9.8 **Administration Reserve Account**

- (1) If required by the Relevant Law the Trustee shall establish an Administration Reserve Account for the Plan that must only be used for the following purposes:
 - (a) To hold the minimum capital amount specified by the Regulator in order to comply with the applicable RSE Licence conditions; and
 - (b) To ensure the solvency of the Trustee and support its business operations and can only be used as and when required or directed by the Regulator.
- (2) Whilst any moneys are held in the Administration Reserve Account they shall not form part of any Account or Pension Account that any income earned by the Plan on those moneys shall be credited to the Administration Account or Member Accumulation or Pension Accounts as the Trustee determines.
- (3) If the Trustee uses or is directed to use any moneys in the Administration Reserve Account by the Regulator it must immediately replenish the account to the amount required by the Regulator by taking moneys from either the Administration Account, Equalisation Account or Accumulation or Pension Accounts in the Division subject to the Relevant Law.

9.9 **Operational Risk Reserve**

- (1) The Trustee shall establish, maintain and manage an Operational Risk Reserve account for the Plan or otherwise hold operational risk trustee capital and make such payments out of the Operational Risk Reserve account or from operational risk trustee capital in accordance with the requirements under the Relevant Law.
- (2) The Trustee has the power to fund an Operational Risk Reserve account from any source of funds as allowed under the Relevant Law and in accordance with any policies and procedures that the Trustee is required to implement and maintain in order to manage the financial resources

required to meet the relevant Operational Risk Financial Requirement in accordance with the Relevant Law.

10. PLAN RECORDS, DISCLOSURE AND INVESTIGATION

10.1 Receipt and payment of moneys

All moneys of the Divisions of the Plan shall be lodged as soon as practicable to the credit of an account in the name of the Trustee or Custodian kept with a bank or non bank financial institution as determined from time to time by the Trustee and the Custodian or to the credit of an Insurer for the payment of premiums or into the trust account of a Solicitor, Accountant or Investment Manager appointed by the Custodian in accordance with this Deed.

10.2 Issue of receipts

A receipt given on behalf of the Plan by the Trustee, by the secretary (if any) of the Plan, by the Custodian or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Plan shall be a sufficient discharge to the person by whom the moneys are paid.

10.3 Records and accounts to be kept

The Trustee shall arrange for:

- (1) the keeping of accounts and records of all moneys received into and disbursed from each Division of the Plan and of all dealings in connection with such moneys;
- (2) the collection, and prompt payment into an authorised account of each Division of the Plan or the otherwise appropriate dealing with all moneys due to each Division of the Plan;
- (3) the keeping and safe-custody of all records, books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law; and
- (4) the preparation of an annual balance sheet of the Plan, a statement of financial position, an operating statement or such accounts and statements in respect of each Plan Year as are required by the Relevant Law.
- (5) the preparation and lodgement of an annual return to the Regulator and of such other certificates, statements, forms, documents and information in such manner and within such time as is required by the Relevant Law.

10.4 Audit

The Trustee shall:

- (1) make suitable arrangements for the auditing of the accounts, books and relevant records of the Plan by an approved Auditor annually or at such other times as required by the Relevant Law; and

- (2) obtain from the approved Auditor a certificate at such time and in such form as required by the Relevant Law.

10.5 Information for Trustee

- (1) When requested by the Trustee, an Employer shall 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 Plan. The Trustee may act upon any information given to it by an Employer pursuant to this Deed and shall not be required to verify that information.
- (2) The Employer shall advise the Trustee when:
 - (a) a Member has died or it is claimed that a Member has become Totally and Permanently Disabled or otherwise disabled or has retired from the workforce on or after attaining the Normal Retirement Age; or
 - (b) a Member has otherwise ceased to be an Employee before reaching the Normal Retirement Age or after Normal Retirement Age without retiring permanently from the workforce.

10.6 Disclosure and Reporting Requirements

The Trustee shall arrange to provide to:

- (1) Employers;
- (2) the Regulator;
- (3) the Actuary;
- (4) the Auditor, and
- (5) any other persons specified in the Relevant Law,

such information or documentation, at such time and in such manner as shall be required by the Relevant Law.

10.7 Production of Books or Access to Premises

The Trustee shall make suitable arrangements for the production of any books, records or other information in relation to the Plan and the access to premises where any such books or information are kept for the purpose of inspection and the taking of copies in accordance with the Relevant Law.

10.8 Directions of Regulator

The Trustee must comply with any direction or requirement of the Regulator under the Relevant Law in relation to the Plan including but not limited to the acceptance of Contributions into the Plan, the disposal of assets of the Plan, the appointment of an investigator to the Plan and the conduct of an investigation into the Plan.

10.9 **Information and Documents for Tribunal**

The Trustee shall arrange to provide to the Tribunal any information or documents relevant to a complaint before the Tribunal in such manner and within such time as required by the *Superannuation (Resolution of Complaints) Act 1993* and may make submissions to or attend a conference of the Tribunal as the Trustee sees fit as required by the Relevant Law.

10.10 **Lost Members**

Where a Member is a Lost Member, the Trustee shall give such information in respect of the Lost Member to the Regulator at such time and in such manner as required by the Relevant Law.

10.11 **Confidentiality**

The Trustee Directors and former Directors, a sub committee and its members and former members or any other party administering or dealing with the Plan shall regard as strictly confidential all information disclosed to or gained by it in the course of administering or dealing with the Plan or otherwise in connection with this Deed or any matter relating or incidental to this Deed.

10.12 **Costs of Supplying Information**

A charge for the supply of information of an amount not exceeding the reasonable cost of giving the information may be required by the Trustee to be paid by the persons in the circumstances permitted under the Relevant Law.

PART 5

11. **PLAN TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL**

11.1 **Trustee must be a Constitutional Corporation**

The Trustee of the Plan shall at all times be a Constitutional Corporation which is eligible to act as Trustee of the Plan and hold an AFS Licence and an RSE Licence unless the Relevant Law otherwise provides.

11.2 **Member and Employer Representation**

If so required by the Relevant Law, the Trustee shall put in place arrangements to facilitate equal representation of Members and Employers.

11.3 **Change of Trustee**

A Trustee shall immediately cease to act as Trustee of the Plan if it:

- (1) is placed in receivership or in liquidation;
- (2) is disqualified from holding office as a Trustee by operation of the Relevant Law or if the Trustee is removed or suspended from office under the Relevant Law; or
- (3) resigns as a Trustee of the Plan by giving written notice to the Regulator.

11.4 **Appointment of Trustee**

A Trustee of the Plan shall be appointed in writing in accordance with the provisions of this Deed by the retiring Trustee PROVIDED THAT in the event that the retiring Trustee is unable or unwilling to do so, then by the Appointors or the Regulator or the court shall determine who shall act as Trustee in accordance with the provisions of this Deed and the Relevant Law and shall take such steps as are necessary to appoint the person to the office of Trustee.

11.5 **Retirement of Trustee**

If the Trustee has retired from office the Trustee shall thereupon or at any time thereafter, do, sign and execute all such things, papers, writings, documents, deeds and instruments as maybe necessary to give proper effect to such retirement from office and the transfer or assignment to or otherwise the vesting of the assets comprised in the Plan in the new Trustee.

11.6 **Significant Adverse Event**

The Trustee will on becoming aware of the occurrence of an event having a significant adverse affect on the financial position of a Division give within the period prescribed by the Relevant Law written notice of the event to the Regulator setting out particulars of the event.

11.7 **Reasonable and Proper Costs**

The Trustee will ensure that the costs, charges and expenses of a Division in respect of which a payment is made are reasonably and properly incurred.

11.8 **Antecedent Breach by Trustee**

Nothing contained in this Deed shall relieve a Constitutional Corporation which ceases to be Trustee from liability for any antecedent breach of trust for which it would otherwise be liable.

12. **TRUSTEE'S INVESTMENT POWERS**

12.1 **Investment Strategy**

The Trustee shall formulate and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Plan which strategies may be reviewed from time to time and shall be formulated and effected in accordance with the Relevant Law.

12.2 **Authorised Investments**

So much of the moneys forming part of the Plan from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested in accordance with the investment strategies of the Plan as determined under Clause 12.1 in any of the following investments:

- (1) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;

- (2) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (3) on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution in any type of account, whether secured or unsecured and on such terms as the Trustee shall determine;
- (4) on deposit with or on loan to any Employer or any other person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- (5) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (6) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (7) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (8) the acquisition of any derivatives or other synthetic investment and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Plan;
- (9) any other investments or joint ventures which the Trustee considers appropriate and which satisfy the Relevant Law,

and the Trustee shall have all the powers and authorities necessary to enable it to make each such investment PROVIDED THAT the Trustee must not make a loan to or give any financial assistance to a Member or a relative of a Member of the Plan and PROVIDED FURTHER THAT the Trustee shall ensure that all investments shall be in accordance with the Relevant Law.

12.3 Power to Sell, Vary and otherwise deal with Investments

The Trustee shall have power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Plan as the Trustee in its discretion sees fit.

12.4 Interest of Trustee in Investment

- (1) Subject to Clause 12.4(2) below, the Trustee and any Director shall have the power and are authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

- (2) The Trustee and any Director shall disclose details of any interest in an investment to which Clause 12.4(1) applies in the manner prescribed under the Corporations Law and the Relevant Law.

12.5 Provision of Investment Choice

- (1) The Trustee shall not be obliged to provide investment choice to Members or Beneficiaries of the Plan. The Trustee may however in its absolute discretion determine to provide investment choice either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Plan.
- (2) Where the Trustee determines to provide investment choice, it shall establish an investment strategy for each of the investment choices available to Members and Beneficiaries under the Plan and where appropriate shall allocate or designate particular assets of the Plan to be held within that strategy and shall advise Members and Beneficiaries of the investment objectives of each of those strategies and provide any other information required for this purpose by the Relevant Law to enable Members and Beneficiaries to make an informed decision regarding the effect of, and risks associated with, each of those investment strategies. The advice provided shall include the various directions that a Member or a Beneficiary can give to the Trustee under Clause 12.5(4) below and the circumstances in which any such directions can be given or altered.
- (3) The Trustee shall continually monitor each of the investment strategies established under Clause 12.5(2) above and the assets held within each strategy in order to ensure that each of those investment strategies is appropriate at all times in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those strategies is available.
- (4) The Trustee may establish a sub-account within the Administration Account established under Clause 9.4 in respect of each strategy and shall debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the Trustee shall determine.
- (5) The Trustee shall determine a Plan Earning Rate in respect of the sub-accounts established under Clause 12.5(4) above and shall allocate the earnings of the Plan to each Account in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the Member's or Beneficiary's Account at the beginning of the Plan Year in respect of which the allocation is being made, an appropriate adjustment being made for amounts (if any) credited or, debited to the Member's or Beneficiary's Account during that Plan Year.
- (6) Upon admission of a person to Membership of the Plan or at any time whilst a person remains a Member or Beneficiary of the Plan, that person may, where the Trustee has determined to offer investment choice in accordance with Clause 12.5(1) above, select one or, where the Trustee has determined to permit Members to select multiple strategies, more than one of the investment strategies formulated by the Trustee under Clause 12.5(2) above and direct the Trustee to invest part or the whole of the monies held in respect of that person under the Plan in accordance with the investment strategy or strategies selected by that person under this Clause PROVIDED THAT any such directions by the Member or Beneficiary shall

only be given in the circumstances permitted by, and in accordance with, the Relevant Law.

- (7) A Member or Beneficiary who wishes to select one or more investment strategies pursuant to Clause 12.5(6) above shall complete an application or any other documentation provided by the Trustee for this purpose which must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary. The Trustee shall not be bound to act on the application or other documentation unless that request or other documentation is completed in accordance with any instructions issued by or on behalf of the Trustee and does not breach any of the requirements of the Relevant Law.
- (8) The Trustee shall advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustee in respect of those Members or Beneficiaries or classes of Members or Beneficiaries who decline, fail to select or otherwise are unable to select an investment strategy under Clauses 12.5(6) or 12.5(7) above.
- (9) Notwithstanding any of the foregoing the Trustee may adopt an investment strategy or strategies specifically tailored to existing Plan investments in respect of which a direction had been given by the Member or Beneficiary or classes of Members or Beneficiaries and accepted by the Trustee.
- (10) Subject to the requirements of the Relevant Law, the Trustee shall ensure that the Contributions of any Members or Beneficiaries that fail to elect that their Contributions are to be invested into a particular investment strategy, pursuant to this Clause 12.5, will be invested in the relevant MySuper Product that the Trustee is authorised to establish and maintain under Clauses 40 and 41 of this Deed.

13. TRUSTEE'S POWERS OF MANAGEMENT

13.1 Trustee to Manage each Division

Subject to the provisions of this Deed, the Trustee must manage each Division for the benefit of the Participating Employers and Members with full and complete powers of management.

13.2 Additional Powers

In addition to the powers which it might have by law and which are otherwise granted to it by this Deed, the Trustee shall have the following powers:

- (1) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (2) to commence, carry on or defend proceedings relating to the Plan or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of this Deed and the Trustee may

abandon, settle, compromise or release any such legal proceedings as it may consider desirable;

- (3) to borrow money and to secure the repayment of it in any manner and upon any terms (including with or without security) which the Trustee may deem advisable PROVIDED THAT such borrowing shall not breach the Relevant Law;
- (4) to insure or reinsure any risks, contingencies or liabilities of the Plan with any Insurer, mortgage insurance company, reinsurance company or superannuation Plan;
- (5) to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Plan;
- (6) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;
- (7) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Plan, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (8) to pay and advance out of the Plan all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Plan and to pay and advance out of the Plan the professional fees (if any) in respect of the provision of its services as Trustee of the Plan;
- (9) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Plan or to the rights of Members, former Members or Beneficiaries in respect of the Plan PROVIDED that an indemnity shall only be provided to the extent it is not limited by or would be inoperative under the Relevant Law;
- (10) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Plan by that person;
- (11) to appoint a person who shall be responsible for the chairing of meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, to pay a fee or remuneration to such person in respect of such position;
- (12) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or Officers of the Trustee or the liability of the Plan to indemnify or reimburse the Trustee or its Directors or Officers pursuant to Clause 15;
- (13) to maintain reserves in respect of a Division;
- (14) to enter into such agreements or enforce any agreement that benefits Members of a Division;

- (15) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Plan at all times as a Complying Superannuation Fund;
- (16) to seek modifications of or exemptions from the application of the Relevant Law to the Plan PROVIDED THAT the Trustee shall be relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted;
- (17) to develop and maintain an anti-money laundering/counter-terrorism financing program in the format required by the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 or as otherwise required by the Relevant Law and engage in appropriate Member identification procedures, transaction reporting and suspicious matter reporting as required by the Relevant Law; and
- (18) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Plan and in the performance of its obligations under this Deed.

13.3 **Exercise of Trustee Powers**

Subject to the Relevant Law, all the powers and discretions conferred upon the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee of the Plan.

13.4 **Trustee Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which shall be final and binding PROVIDED THAT the Trustee shall not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination PROVIDED FURTHER THAT the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed shall be subject to the Relevant Law.

13.5 **Trustee Delegation**

The Trustee may delegate to any person any of the powers, duties and discretions conferred on the Trustee under this Deed upon such terms and conditions as the Trustee shall determine and the Trustee may vary, limit or revoke any such delegation PROVIDED THAT any such delegation shall only be undertaken in accordance with the Relevant Law.

13.6 **Trustee Direction**

Except in those circumstances which are acceptable within the Relevant Law the Trustee shall not be subject to direction by any person in the exercise of any of its powers.

- (1) Trustee may consult a committee.
- (2) The Trustee may from time to time establish and appoint persons to committees and/or working parties for the purposes of such matters as the Trustee considers fit and on such terms as it thinks fit.
- (3) Any committee or working party established hereunder shall be entitled to give advice on those matters required by the Trustee.
- (4) The Trustee may but shall not be bound to act on the advice of any such committee or working party.

13.7 Compliance with Relevant Law

The Trustee is empowered to, and must, do or cause to be done all acts, matters and things which it considers appropriate or which are necessary to comply with or satisfy the Relevant Law. The Trustee may, but is not required to comply with or consider complying with any standard or provision of the Relevant Law which is not a requirement.

13.8 Failure to Comply with Relevant Law

The Trustee must not do, or omit to do, or cause or permit to be done or omitted, anything which would result in the Plan failing to comply with or satisfy the Relevant Law and the Trustee must do all acts, matters and things which it considers appropriate, necessary or incidental to prevent such a failure.

13.9 Application of rules to Directors

Clauses 13.7 and 13.8 also apply to each Director to the extent required by the Relevant Law.

13.10 Marketing and promoting the Plan

- (1) For the purposes of this clause, an "Activity" shall mean any act directly or indirectly related to or incidental to the marketing (including sponsorship), promoting, advertising (in any format) or educating of any person or the creation of awareness for any person or relevant entity.
- (2) The Trustee may, subject to the Relevant Law, engage in any Activity which the Trustee determines will promote the Plan in order to limit the reduction in the level of Membership, to increase the level of Membership, to increase the assets under management of the Plan or for any other purpose which the Trustee believes is in the best interests of the Members.
- (3) The Trustee may, subject to the Relevant Law, engage in any activity which the Trustee determines will protect the asset base, Contributions base, Membership base or sponsorship base of the Plan, which the Trustee believes is in the best interests of Members.
- (4) The Trustee may only exercise the powers under this clause where the Trustee has determined that:
 - (a) the Activity is in the best interests of the present and future Membership of the Plan;

- (b) the expense of the Activity is reasonable having regard to the likely benefits to the present and future Membership; and
 - (c) the expense is reasonable having regard to the total value of the assets of the Plan.
- (5) The Trustee may engage the services of any suitably qualified persons to advise on, be involved in or to implement any Activity and may remunerate those persons in respect of any advice, involvement or implementation in accordance with the powers set out in this Deed. The Trustee may terminate the services of the persons appointed at any time.

14. LIMITATION OF LIABILITY

14.1 Liability of Trustees, Directors and Officers

Neither the Trustee nor any of its Directors or Officers shall be liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Plan except a liability that:

- (1) arises because of that person's failure to act honestly; or
- (2) arises because of that person's intentional or reckless failure to exercise the degree of care and diligence that that person is required to exercise; or
- (3) consists of a monetary penalty under a civil penalty order.

14.2 Loss, Default, bona fide acts, mistake

Without limiting the generality of the exemption from liability under Clause 14.1, the Trustee shall not incur any liability for:

- (1) any loss suffered by the Plan or suffered by any Member or any person having at any time an interest in the Plan;
- (2) any act or default of any former Trustee or any Director or Officer of a former Trustee, of any Member or of any agent employed in good faith by the Trustee;
- (3) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee;
- (4) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Plan at any time.

14.3 Limitation of exemption from liability

This Clause shall only operate to exempt a person from liability to the extent that the provision of such an exemption is not limited by or would be inoperative under the Relevant Law.

15. INDEMNITY OF TRUSTEE

15.1 Indemnity and Lien

The Trustee and where applicable its Directors and Officers shall be indemnified out of the Plan against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions-vested in it or them under this Deed or at law except a liability that:

- (1) arises because of that person's failure to act honestly; or
- (2) arises because of that person's intentional or reckless failure to exercise the degree of care and diligence that that person is required to exercise; or
- (3) consists of a monetary penalty under the Relevant Law,

and the Trustee shall have a lien on and may use the moneys representing the assets of the Plan for the purpose of this indemnity.

15.2 Payments in Good Faith

This indemnity shall extend to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

15.3 Opinion or Advice

This indemnity shall extend to the circumstances where the Trustee acts upon the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.

15.4 Failure to Carry Out Agreement

This indemnity shall extend to the circumstances of the failure of any person or corporation to carry out any agreement made with the Trustee and to the circumstances of any act or omission on the part of such person or corporation.

15.5 Agents and Servants of Trustee

This indemnity shall extend to the circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

15.6 Limitation of Indemnity

The indemnity provided under this Clause in respect of the Trustee or any Directors, Officers, agents or servants of the Trustee shall not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

16. REMUNERATION OF TRUSTEE

16.1 Costs and Disbursements

The Trustee shall be entitled to charge each Division fees and to recover costs and disbursements incurred in respect of the provision of its services as Trustee of the Plan as the Trustee determines. The fees, costs and disbursements will be debited to the Administration Account of each Division or directly to the Accumulation Account or Pension Account of a Member of a Division as determined by the Trustee and which fees, costs and disbursements may reduce the Member's Withdrawal Benefit.

16.2 Fees Determined at Discretion of Trustee

The fees charged by the Trustee shall be determined from time to time by the Trustee in accordance with the Relevant Law. Prior notice of any changes which are intended to be made to the fees chargeable shall be provided to the Members and any Employers by the Trustee as required by the Relevant Law.

16.3 Reimbursement

The Trustee shall be entitled to be reimbursed from each Division for and in respect of the following expenses:

- (1) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Plan (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debits tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (2) such fees and expenses of the Auditor as the Trustee shall consider reasonable;
- (3) any Taxation and any Levy paid or payable by the Trustee in connection with the Plan on any account whatsoever;
- (4) all professional fees and expenses of any barrister, solicitor, accountant, Actuary, Plan manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under this Deed;
- (5) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any Disclosure Document, any periodic or other report or document in relation to the Plan or the making available of any books or documents of the Plan;
- (6) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Plan;
- (7) all and any costs incurred in relation to an investigation of the Plan, the resolution of disputes or the preparation of information and submissions and the attendance of the Trustee before the Tribunal;

- (8) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices;
- (9) any reasonable fees payable or to be payable to directors of the Trustee by the Trustee; and
- (10) any other expenses as determined by the Trustee pursuant to the Relevant Law.

PART 6

17. APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS

17.1 Actuary and Auditor

The Trustee shall if necessary appoint a person or firm to the following offices on such conditions as it shall determine:

- (1) an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (2) an auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Law.

17.2 Administrator

The Trustee may appoint in writing on such terms as it thinks fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations to act as the Administrator of the Plan to carry out some or all of the administration of the Plan which appointment shall be made on such terms and conditions as the Trustee considers appropriate.

17.3 Investment Manager

- (1) The Trustee shall have power to appoint in writing one or more persons or companies to act as Investment Manager for the Plan for such period and on such terms and conditions as the Trustee shall determine PROVIDED THAT the person or company is qualified to act and the terms and conditions of appointment are in accordance with and comprise all the requirements of the Relevant Law;
- (2) The Trustee may delegate to each Investment Manager such powers, discretions and authorities relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Plan entrusted to such Investment Manager as the Trustee shall determine and may reallocate the assets of the Plan being invested by that Investment Manager.

17.4 Custodian

- (1) The Trustee shall have power to appoint one or more companies to act as a Custodian for the Plan and the Plan's bank account for such period and

on such terms and conditions as the Trustee shall determine and may delegate and confer upon such Custodian such powers, discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature whatsoever or relating to the custody of any part of the assets of the Plan, or the appointment of Sub-Custodians as the Trustee shall determine provided that the company appointed to act as Custodian shall not be prohibited from so acting at any time under the Relevant Law;

- (2) The Trustee shall not be liable or responsible for any act, omission, error judgment, negligence or breach of trust by any Custodian;
- (3) The Trustee shall have power to pay out of the Plan to any such Custodian such remuneration for their services as the Trustee considers appropriate;
- (4) The Trustee may remove from office any Custodian appointed pursuant to this Clause.

17.5 Consultants and Officers

In addition, the Trustee from time to time may appoint and remunerate such other consultants and Officers as it considers desirable for the proper management and administration of the Plan.

17.6 Removal

The Trustee may remove from office any person or company appointed to any position under this Clause and shall remove any such person or company where so required by the Relevant Law.

18. ACTUARIAL INVESTIGATIONS

In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or to act upon the advice so provided except in circumstances required by the Relevant Law.

PART 7

19. CONTRIBUTIONS TO PLAN

19.1 Minimum and Maximum Contributions to the Plan

The Trustee may set a minimum and a maximum amount of Contributions that can be paid to the Plan for any Member for any given period.

19.2 Member's Contributions

- (1) Subject to clause 19.1, a Member may make Contributions to the Plan.
- (2) Unless the Trustee otherwise determines or the Relevant Law does not allow, the Contributions payable by a Member may, with the Member's consent, be deducted by the Participating Employer from each wage or

salary payment and shall be paid by the Participating Employer to the Plan as directed by the Trustee in accordance with the Relevant Law PROVIDED THAT if no such deduction is made the Member shall pay Contributions to the Plan in such manner and at such times as shall be agreed upon between the Trustee and that Member.

19.3 **Employer's Contributions**

Contributions payable by any Participating Employer shall be paid to the Trustee in such manner and at such times as outlined in the Rules of a Division or as shall be agreed between the Trustee and that particular Participating Employer.

19.4 **Additional Contributions**

An Employer or Member may make such additional Contributions to a Division if permitted by the Rules of that Division as the Trustee may from time to time agree. Those Contributions shall be applied by the Trustee as the Employer or Member, as the case may be directs and as agreed by the Trustee. The Trustee may require that a particular Employer shall make additional contributions in respect of some or all of its employees or former employees who are Beneficiaries and the Employer shall comply with that requirement.

19.5 **Refund or Transfer of Payments**

If any monies paid to the Plan will or may jeopardise the status of the Plan as a Complying Superannuation Fund or, in the opinion of the Trustee, may have been paid by mistake (whether of law or of fact) or the Contributions are not able to be otherwise accepted under the Relevant Law, the Trustee may refund those monies to the person who paid them to the Plan or transfer them pursuant to Clause 20.1. Subject to the Rules, the Trustee shall not be liable to pay any interest, or account for any earnings or compensate the person who paid those monies in any way and a person shall not be deemed to have become an Employer or a Member merely by reason of the receipt of the Trustee of those monies.

19.6 **Refund of Government Co-Contributions**

If the Trustee has received an overpayment of a Government Co-Contribution in respect of a Member, the Trustee must repay the required amount to the Regulator within the time prescribed in the Superannuation (Government Co-contribution for Low-Income Earners) Act 2003.

19.7 **Interest on Contributions**

The Trustee may require a Participating Employer to pay interest at a rate determined by the Trustee and any collection costs on any of its Contributions which are in arrears or may require a Participating Employer or Member, as appropriate, to pay interest on any Member's Contributions which are in arrears.

19.8 **Contributions in Cash or Assets**

Any Contributions made by a Member, Participating Employer or other person shall be made to the Trustee within the Plan Year in respect of which it is paid or within such period as the Relevant Law may allow either in cash or by transfer of an asset or assets PROVIDED THAT the Trustee allows such a transfer of assets and the assets transferred must be authorised investments as set out in Clause 12.2 of this Deed PROVIDED FURTHER that any transfer of an asset under this Clause shall

be made upon the terms and conditions specified under the Relevant Law, and shall not be made if the Trustee or an agent or delegate of the Trustee is prohibited by the Relevant Law from acquiring the asset.

19.9 **No Obligation to Contribute**

In the absence of any agreement to the contrary neither a Member nor a Participating Employer shall be under any obligation to make a Contribution to the Plan in respect of any Plan Year and a Member may remain a Member of the Plan notwithstanding a Contribution is not made in respect of that Member in respect of any Plan Year.

19.10 **Limitation on Accepting Contributions**

The Trustee must not accept Contributions to the Plan by or in respect of a Member that are not permitted by the Relevant Law.

19.11 **Level of Contributions**

The Trustee shall not accept any Contribution or any Shortfall Component:

- (1) if the acceptance of the Contribution or Shortfall Component would prevent the Plan from qualifying as a Complying Superannuation Plan; or
- (2) if the Regulator directs the Trustee not to accept any Contributions by a Participating Employer or any Shortfall Component in accordance with the Relevant Law.

19.12 **Ineligible Contributions**

If the Trustee shall at any time ascertain that any Contribution or Shortfall Component has been accepted in breach of the provisions of this Clause, the Trustee shall refund such Contribution or Shortfall Component within any time period which may be required by the Relevant Law, less any:

- (1) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to that Contribution or Shortfall Component; and
- (2) reasonable administration and applicable investment charges,
- (3) and reduce the Benefits held for the Member in the Plan to those which would have been held if such Contribution or Shortfall Component had not been received.

19.13 **Contributions by and on behalf of a Spouse**

The Spouse of a Member may, with the consent of the Member and the Trustee, make Contributions to the Plan in respect of that Member notwithstanding that the said Spouse may also be a Member of the Plan in their own right.

19.14 **Direct Payment**

- (1) The Trustee shall only be responsible for Contributions which are received by the Trustee from the relevant Participating Employer PROVIDED THAT Contributions shall be deemed to have been received by the Trustee if with

the consent of the Trustee, Contributions are to be paid by the Participating Employer to the Administrator with such information with respect to the Contributions as is required by the Trustee.

- (2) The Trustee may but shall not be required to take any action to recover unpaid Contributions from the Participating Employer.

19.15 Refusal of Small Contributions

Subject to the Relevant Law the Trustee may refuse to accept Contributions by or in respect of a Participating Employer or Member if having regard to the amount of the Contribution and prospective Contributions and the Accumulation Account of the Member for the time being:

- (1) The Trustee determines that the Member may become a Small Balance Member;
- (2) The Trustee determines that it is not fair and reasonable as between the Member and other Members of the Plan that the Contribution be accepted and held by the Plan without the Member's Accumulation Account being debited for the time being with an equitable proportion of the costs and expenses of the administration of the Plan; and
- (3) The Participating Employer does not pay to the Plan an additional amount as determined by the Trustee to cover the equitable proportion of such costs to the extent not permitted to be charged to the Member's Accumulation Account;

PROVIDED THAT the Participating Employer may arrange for the remittance of Contributions not so accepted (Rejected Contribution) to an Approved Benefit Arrangement and the Trustee shall then accept from such Approved Benefit Arrangement the transfer to the Plan of an amount representing an accumulation of Rejected Contributions (with or without interest) as and when such amount is such that the Trustee would not refuse to accept the Rejected Contributions as a Contribution under this Clause, subject to the relevant Employee then being a Member.

19.16 Apportionment Between Members

With each payment of Contributions to the Trustee, the Participating Employer shall advise such details with respect to those Contributions as shall be required by the Trustee.

19.17 Other Contributions

The Trustee may accept any other Contribution permitted by the Relevant Law.

20. TRANSFERS TO APPROVED BENEFIT ARRANGEMENTS

20.1 Transfers to Approved Benefit Arrangements

Where a Member joins or is eligible to join any Approved Benefit Arrangement and requests the transfer of the whole or part of his or her entitlement in the Plan, or if the Trustee wishes to transfer the whole or part of the entitlement held on behalf of a Member to an Approved Benefit Arrangement where the Member is not at the time

of the transfer a participant in that Approved Benefit Arrangement, and the Relevant Law enables such a transfer to take place, then the Trustee may transfer the whole or any part of the amount in the Plan representing the Member's Benefit or Benefit Entitlement to the trustee of the Approved Benefit Arrangement PROVIDED THAT a transfer may only be made pursuant to this Clause where the Trustee is satisfied that:

- (1) the transfer is permitted under, and is made in accordance with, the Relevant Law;
- (2) the rights of the Member or the Beneficiaries of the Member to receive the Benefits arising from the amount transferred are fully secured: and
- (3) In the case of a Portability Request the request has been made in accordance with the Relevant Law.

20.2 Effect and Method of Transfer Out

The receipt of the transferred amount by the proper officer of the Approved Benefit Arrangement shall be a complete discharge to the Trustee of all liabilities in respect of the transferred amount and the Trustee shall have no responsibility to see to the application of the transferred amount.

Upon the completion of a payment or transfer in respect of a Member or Beneficiary under this Clause all the rights and interest of that Member or Beneficiary under this Deed (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstances affecting the Member or Beneficiary) in respect of the transferred amount shall be entirely extinguished.

20.3 Roll Over

Where a Member or former Member wishes to effect a Roll Over Payment or an Internal Roll Over in respect of all or any of the entitlement of the Member in the Plan the Member shall:

- (1) make a request to the Trustee in writing nominating the Approved Benefit Arrangement to which the Roll Over Payment or Internal Roll Over is to be made and the amount to be applied as the Roll Over Payment or Internal Roll Over or the percentage of the Member's Account or Pension Account to be applied as the Roll Over Payment or Internal Roll Over; and
- (2) complete and execute a notification of the Roll Over Payment or Internal Roll Over or such other documentation as shall be required by the Tax Act to enable the Roll Over Payment or Internal Roll Over to be effected to the Approved Benefit Arrangement in accordance with the Relevant Law.

20.4 Rollover or Transfer of Withdrawal Benefit

- (1) Upon the written request of a Member, the Trustee must roll over or transfer the whole or part of the Member's Withdrawal Benefit in accordance with the Member's request as soon as practicable, and in any event within 30 days (or such other time permitted by the Relevant Law after:
 - (a) the Trustee receives the request from the Member; or

- (b) If the Trustee requires further information – the time when the Trustee receives all of that required information; or
 - (c) If the Trustee is suspended from the obligation to rollover the benefit by the Regulator – the end of the period of suspension; or
 - (d) If part or all of the Member's benefits comprise of an illiquid investment – within the time permitted under the Relevant Law; or
 - (e) Such other timeframe as the Relevant Law otherwise permits.
- (2) If the Trustee receives a request to rollover or transfer a Member's Withdrawal Benefit and the Trustee requires further information, the Trustee must obtain such information in such time frames as required by the SIS Act and SIS Regulations.
- (3) The Trustee may refuse a Member's request under Clause 20.4(1) in the circumstances set out in the SIS Act and the SIS regulations.

20.5 **Eligible Rollover Funds**

The Trustee may in accordance with the Relevant Law and, where required by the Relevant Law the Trustee shall, transfer a Member's Benefit to an Eligible Rollover Fund and shall provide any information to the trustee of the Eligible Rollover Fund at such time and in such manner as required by the Relevant Law.

20.6 **Preserved Payment Transfers**

Where a Member or former Member has Preserved Payment Benefits in the Plan which form part of the amount transferred or rolled-over to an Approved Benefit Arrangement, the Trustee shall ensure that the governing rules of the Approved Benefit Arrangement provided that if the Member wishes to leave the Approved Benefit Arrangement the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Relevant Law.

20.7 **Lost Members**

Where the Trustee transfers the Benefits of a Lost Member to another Approved Benefit Arrangement, the Trustee shall give such information to the trustees of the other Approved Benefit Arrangement at such time and in such manner as required by the Relevant Law.

20.8 **Trustee can transfer Splittable Contributions**

- (1) From 1 July 2006 a Member of the Fund may in a financial year apply to the Trustee to roll over, transfer or allot some or all of the Members Splittable Contributions made by or in respect of the Member in the previous financial year to the Member's Spouse.
- (2) The Trustee from 1 July 2006 may accept on application to roll over, transfer or allot Splittable Contributions if:
 - (a) A Member has not already made an application in relation to the same Spouse which has been given effect or is being considered by the Trustee;

- (b) The amount of the Splittable Contributions to which the application relates does not exceed the Maximum Splittable Amount under the Relevant Law;
 - (c) The Member's Spouse is not
 - (i) Aged 65 years or more; or
 - (ii) Aged between their Preservation Age and 65 years and permanently retired;

and the Spouse has provided a statement to the Trustee confirming either (ii) above or that they are aged less than their relevant Preservation Age.
 - (d) The Trustee has no reason to believe that the Spouse statement in (c) above is untrue;
 - (e) The Member has specified in the application the amount of Taxed Splittable Contributions and Untaxed Splittable Contributions that the Member is seeking to split;
 - (f) The amount of Untaxed Splittable Contributions specified in the application is less than or equal to the amount specified in the Relevant Law;
 - (g) The amount of Taxed Splittable Contributions specified in the application is less than or equal to the amount specified in the Relevant Law;
 - (h) The Splittable Contributions do not comprise part of a defined benefit component of a defined benefit interest in the Plan;
 - (i) The Splittable Contributions are not subject to a Payment Split or Payment Flag;
 - (j) Any fee decided by the Trustee to be charged to the Member to implement a transfer of Splittable Contributions has been paid.
- (3) If the Trustee accepts a contributions splitting application it will as soon as practicable and in any case within 90 days after receiving the application, rollover, transfer or allot the relevant Splittable Contributions to the Member's Spouse.
 - (4) If the Trustee accepts a contributions splitting application the Trustee shall give to the Regulator the statement required by the Relevant Law.
 - (5) The Trustee has discretion to reject any contributions splitting application made by a Member and may in its discretion notify the Member that such application has been rejected because the application, if accepted, would leave insufficient funds to meet a tax liability, to pay Fund expenses or to meet other expenses.
 - (6) The Trustee cannot accept a notice provided by a Member under section 82AAT and section 290-170 of the Tax Act in respect of Contributions

which are the subject of a contributions splitting application already lodged with the Trustee which has not been rejected.

PART 8

21. TRANSFERS FROM APPROVED BENEFIT ARRANGEMENTS

21.1 Takeover or Transfer of Benefits

Subject to Clause 21.2, where a person who is or will be admitted as a Member (Relevant Person) is or was a member of or is or was the beneficiary under any other Approved Benefit Arrangement, the Trustee may by resolution take over or acquire by transfer from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of such Approved Benefit Arrangement or the interest of any person who is a participant or former participant of that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of such Approved Benefit Arrangement at the time of transfer.

21.2 Rights and Entitlements of Member in Transferred Benefits

The Trustee shall hold any such amounts transferred in accordance with Clause 21.1 above as part of the Plan and reflect such equivalent rights, entitlements and interests in the particular Member's Accumulation Account or Pension Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Relevant Person shall be deemed to have become a Member of the Plan on the date the Relevant Person became a member of the Approved Benefit Arrangement from which the Benefit was transferred.

21.3 Consent of Relevant Person

If a resolution of the kind referred to in Clause 21.1 is made in circumstances where, for the purposes of the transfer, the Plan will be a Successor Fund of the other Approved Benefit Arrangement, the Trustee is not required to obtain the consent of the Relevant Person. Otherwise, the resolution may only be carried into effect with the prior consent of the Relevant Person.

21.4 Trustee May Receive Splittable Contributions

From 1 January 2006 where a Member of the Fund is the Spouse of another Member of the Fund or the Spouse of a member of another Approved Benefit Arrangement the Trustee may accept into the Fund on behalf of the Member the roll over (including internal roll over), transfer or allotment of a Contributions-Splitting Superannuation Benefit provided the Trustee receives all the information it requires.

PART 9

22. MONEYS OWING TO PLAN

22.1 Where a Member owes any moneys to the Plan, (including costs of any prosecution or civil proceedings together with interest on those moneys at a rate determined by the Trustee) the Trustee may debit the Accumulation Account of the

Member for a sum equivalent to the said moneys owing from that part of the Benefit of the Member which would otherwise be payable and the Trustee shall retain them in the Plan;

PROVIDED HOWEVER that the exercise of the lien by the Trustee under this Clause shall only be done if permitted by the Relevant Law.

PART 10

23. FORFEITURE OF BENEFIT ENTITLEMENTS

23.1 Conditions of Forfeiture

Any Member or Beneficiary or after the death of a Member, any of the Dependents of the Member:

- (1) who assigns or charges or attempts to assign or charge any Benefit Entitlement;
- (2) whose interest in any Benefit Entitlement, whether by the Member's or Beneficiary's own act, operation of law, an order of any Court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (3) who is insolvent or who commits or has committed an act of bankruptcy;
- (4) who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit Entitlement or who, in the opinion of the Trustee is incapable of managing the person's affairs;
- (5) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation; or
- (6) where a Benefit becomes payable to a Lost Member,
- (7) shall forfeit entitlement to any Benefit Entitlement held in the Plan at that time by that person PROVIDED HOWEVER that this Clause shall only apply to the extent that it is not limited by or inoperative under the Relevant Law or the Bankruptcy Act 1966 PROVIDED FURTHER that the Trustee shall only recognise an assignment or charge of a Benefit Entitlement where it is acceptable under the Relevant Law.

23.2 Accumulation Account Residue

Any Member, former Member or Beneficiary who has been paid all Benefits which the Trustee considers should be paid pursuant to the provisions of this Deed and who still has a residual amount standing to the credit of their Accumulation Account shall forfeit such amount and such amount shall be dealt with as a forfeited Benefit Entitlement.

23.3 Forfeiture Account

- (1) The Trustee shall have power at any time to establish a Forfeiture Account of the Plan and shall transfer to the credit of the Forfeiture Account any

amounts forfeited pursuant to the provisions of Clauses 23.1 and 23.2 above or otherwise forfeited in accordance with this Deed.

- (2) Whilst any moneys are held in the Forfeiture Account they shall not form part of any Accumulation Account and any income derived by the Plan on the moneys held in the Forfeiture Account shall be credited back to the Forfeiture Account.
- (3) The Forfeiture Account shall be applied in accordance with the remaining provisions of this Clause.

23.4 Application of Forfeited Benefit Entitlements

Subject to Clause 22, the Trustee shall hold upon trust and pay or apply any amounts which have been forfeited and are held in the Forfeiture Account in any one or more of the following ways:

- (1) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;
- (2) to the trustee of the estate of the Member or former Member (subject to the provisions of the *Bankruptcy Act 1966*);
- (3) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (4) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Plan;
- (5) for the provision to other Members of the Plan or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances;
- (6) for crediting to the Equalisation Accounts to be applied in accordance with Clause 9.5;
- (7) for payment to such of the Participating Employers of the Member or former Member (if any) as the Trustee in its absolute discretion considers appropriate;
- (8) for any other purpose approved in writing by the Regulator,

PROVIDED THAT where a Member remains in the employment of a Participating Employer any payments made to that Member shall be limited to the relief of hardship of the Member or of the Dependants of the Member and PROVIDED FURTHER THAT the Trustee shall only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law.

23.5 Readjustment of Member Interest

Where a forfeiture of a Benefit Entitlement occurs under this Clause in respect of a Member, and the Trustee is of the opinion that the event giving rise to the forfeiture

has ceased to affect that Member, then the Trustee may, with the approval of the Participating Employer (where applicable), readjust any rights, entitlements or interests of the Member in the Plan and may provide the Member with such rights or entitlements as the Trustee considers appropriate PROVIDED THAT the rights or entitlements shall not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

23.6 Severability

If any part of this Clause should be construed as illegal, invalid or void, the legality and validity of the remaining parts of this Clause shall not be affected and the illegal, invalid or void part shall be deemed to be deleted.

PART 11

24. TRANSFER IN SPECIE

24.1 Transfer of Policy

Where a Member or a Beneficiary is entitled to be paid a Benefit or the Trustee in its discretion determines to pay a Benefit to a Member, a Beneficiary or the Dependants of the Member and the same includes any interest in a Policy of any kind on the life of the Member or Beneficiary the Trustee may in its absolute discretion and in lieu of surrendering such Policy assign the same to such Member or Beneficiary or to the Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of such Policy as at the date of assignment shall be debited as a payment to the Member or Beneficiary in the assessment of any entitlement as reflected by the Member's or Beneficiary's Accumulation Account or Pension Account and neither the Trustee nor an Employer shall be liable to pay any further premiums which may become due and payable under the Policy as from the date of such assignment.

24.2 Transfer of Investments

The Trustee may with the consent of a Member or a Beneficiary to whom a Benefit is payable transfer investments of the Plan of equivalent value to such Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed PROVIDED HOWEVER that the Trustee is satisfied that such transfer is permitted by the Relevant Law.

24.3 No Beneficial Interest

With the exception of the provisions of this Clause and Clause 12.5, no Member or Beneficiary shall have or acquire any beneficial or other interest in a specific asset of the Plan or the assets of the Plan as a whole whilst such asset or assets remain subject to the provisions of this Deed.

PART 12

25. PAYMENT OF BENEFITS ON DEATH

25.1 Payments to Dependants or Legal Personal Representatives

Subject to the Relevant Law, upon the death of a Member or Beneficiary who had Dependants, the Trustee shall:

- (1) pay or apply the Benefit of one or more of the Member's or Beneficiary's Dependants (including any Nominated Beneficiaries) and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee shall from time to time in its discretion determine PROVIDED THAT the payment of the Benefit shall comply with the Relevant Law; or
- (2) if required by a Death Benefit Notice (if that method is adopted by the Trustee) given by the Member to the Trustee, pay or apply the Benefit in accordance with that Death Benefit Notice;

25.2 Payments to Other Persons

Upon the death of a Member or Beneficiary who had no Dependants, the Trustee shall pay the Benefit to the Legal Personal Representative of the Member or Beneficiary, or if there is no Legal Personal Representative may pay or apply the Benefit in such a manner as permitted by the Relevant Law or in accordance with Clause 23.

25.3 Discharge of Trustee

The receipt by a Dependant, the Legal Personal Representative, Relative or other person of a Benefit paid under this Clause shall be a complete discharge to the Trustee in respect of any amount paid to that person and the Trustee shall not be bound to see to the application thereof.

25.4 Investment of Member monies on Death

- (1) Upon notification and confirmation of a Member's death, and subject to the Relevant Law, the Trustee may in its absolute discretion redeem the Member's monies from any particular investment strategy and reinvest those monies in an alternative investment option, including but not limited to investing those monies in cash.
- (2) Clause 12.5(2) of this Deed does not apply to the Trustee in such circumstances and therefore the Trustee is not required to notify any person of such redemption and reinvestment, or provide any person with information to enable such a person to make an informed decision regarding the effect of, and risks associated with, any divestment and reinvestment into a new investment strategy.

26. PAYMENT OF BENEFITS

26.1 Address for Benefits

Benefits are payable at the principal office for the time being of the Trustee or otherwise as may be determined by the Trustee and advised to the Member or Beneficiary. The Trustee may forward the Benefits to the postal address or bank account of the Member or Beneficiary last notified to the Trustee or to such other place as the Trustee shall determine.

26.2 Notification of Address

Every Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Beneficiary, shall (except where no further Benefit is payable from the Plan) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Beneficiary changes address at any time of:

- (1) the place of residence of the Beneficiary and the full postal address of that residence; and
- (2) the bank account (if any) to which the Beneficiary requests that the Benefit be paid.

26.3 Receipt for Benefits

Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in a form from time to time required by the Trustee.

26.4 Notification of Claims and Proofs

Where a Benefit is payable to or in respect of a Member, prior to payment of the Benefit the Trustee shall notify:

- (1) the Member, in the case of a Benefit payable to the Member;
- (2) the Nominated Dependant, the Reversionary Beneficiary, the Legal Personal Representative, any known Dependants or any other person who the Trustee reasonably believes may have an entitlement to or an interest in the Benefit, in the case of a Benefit payable on death of a Member;
- (3) in any other case, such persons as the Trustee reasonably believes may have an entitlement to or interest in the Benefit,

in writing of the period within which the person may seek to claim an entitlement to the Benefit and where a person has produced to the Trustee such evidence, done all such acts and executed all such documents as the Trustee may reasonably require in order to satisfy the Trustee that the person is entitled to the payment of part or all of the Benefit under this Deed, the Trustee shall pay such Benefit PROVIDED THAT the Trustee must notify in writing any person mentioned in Clauses 26.1, 26.2 and 26.3 above of the period within which the person may object to the payment of the Benefit and may defer the payment of the Benefit until that period for objections has elapsed.

26.5 Notification Outside Time Limit

Where a person has failed to notify the Trustee of a claim or of the intention to make a claim within the period determined by the Trustee in Clause 26.4, no payment shall be made to the person unless the Trustee is satisfied that such a payment may be made from the Plan in accordance with this Deed and the Relevant Law.

26.6 No Personal Claim

No Member or person claiming through a Member or on behalf of a Member or as the Dependant of a Member shall be entitled to require payment of that Member's interest in the Plan except as may be provided in this Deed.

26.7 Payment to Others on Behalf of Beneficiaries

When any Beneficiary is under the age of 18 years or is under any legal disability or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit in such one or more of the following ways as the Trustee shall determine:

- (1) to or towards the maintenance, education, advancement, support or benefit of the Beneficiary in such manner and on such terms and conditions as the Trustee shall determine; or
- (2) to any other person who appears to the Trustee to be a trustee for the Beneficiary or Spouse, Child, parent or guardian or a person having custody of the Beneficiary for application on behalf of the Beneficiary,

and the receipt of the person to whom the Benefit is paid shall be a complete discharge of the Trustee for the payment in respect of the Beneficiary and the Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

26.8 Preservation Conditions

Notwithstanding any other provision of this Deed which may be construed to the contrary:

- (1) no Member or Dependant of a Member shall be entitled to receive any Benefit which is a Preserved Payment Benefit prior to the Member retiring from Gainful Employment at or after reaching the age of 55 years or such other prescribed age otherwise than in the event of Total and Permanent Disablement or death of the Member or in other circumstances permitted by the Relevant Law;
- (2) any Pension or Annuity that a Member or the Dependents of a Member have a right to receive from the Plan must commence to be paid, and any other Benefits that a Member or the Dependents of a Member have a right to receive from the Plan are to be paid, at such time as is permitted or required by the Relevant Law;
- (3) any Preserved Payment Benefits held by the Trustee which are unable to be paid out to the Member may, at the discretion of the Trustee, be dealt with in accordance with Clause 20, or be retained in the Plan subject to 34.

26.9 Compulsory Payment of Benefits

- (1) Subject to Clause 26.9(2), the Trustee must pay out a Member's Benefit when required to do so under the Relevant Law.
- (2) The Trustee may roll over a Member's Benefits to another Approved Benefit Arrangement as soon as practicable for immediate cashing instead of paying the Benefit to the Member.

26.10 Unclaimed Benefits

The Trustee shall give to the Regulator a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Regulator at such time and in such manner as required by the Relevant Law.

26.11 Death of Former Member Prior to Benefit Payment

Where a Member or Former Member has become entitled to payment of a Benefit as a Lump Sum and before payment has been made by the Trustee, the Member or Former Member dies, the Trustee may pay that Benefit in accordance with the provisions of Clause 25.

26.12 Limitation on Benefits

Notwithstanding any other provision of this Deed, the Trustee shall not pay out any Benefits to Members, Dependants or Beneficiaries where such payment would cause the Plan to breach the Relevant Law.

PART 13**27. PAYMENT OF TAXATION AND LEVIES****27.1 Tax on Benefits**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, shall deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it.

27.2 Tax on Contributions and Shortfall Components

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, may deduct any Taxation payable or amounts paid to satisfy a Release Authority in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member. Where such Taxation has been deducted from a Contribution or Shortfall Component a reference to the crediting of the Contribution or Shortfall Component to an Accumulation Account shall mean the crediting of the net Contribution or Shortfall Component after the deduction of such Taxation.

27.3 Tax on Income

The Trustee may make provision for and shall deduct any Taxation payable or amounts paid to satisfy a Release Authority in relation to the taxable income of the

Plan not otherwise deducted under this Clause from the Administration Account or from Accumulation Accounts or Pension Accounts of Members.

27.4 Surcharge

The Trustee may make provision and shall deduct any surcharge or other amount of whatever description levied on a Division of the Plan in respect of a Member, pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including provisional or advance payments required under that legislation). The Trustee shall adjust the Benefit of the said Member to reflect the cost to the Plan of the cost of the payment.

27.5 Payment to Relevant Authority

The Trustee shall pay all Taxation which is not being transferred with the agreement of the Trustee to an Insurer or otherwise transferred as provided under the Tax Act, and any Levy which is due and payable by the Plan, to the relevant authorities within the required time for payment.

27.6 Payment made pursuant to Release Authority

The Trustee shall pay all Taxation required to be paid on behalf of a Member pursuant to a Release Authority given to the Trustee for payment of an excess contributions tax assessment.

PART 14

28. POLICIES OF ASSURANCE

28.1 Trustee to effect Policy

The Trustee may effect Policies in its own name with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another. The Trustee shall not be responsible or liable to a Member, a Member's Legal Personal Representative or the Dependants of a Member should the Trustee determine not to exercise the power to effect such Policy or Policies or is unable to obtain a Policy or Policies.

28.2 Trustee Right to Rectify

The Trustee has the right to rectify any Member's insurance cover or insurance information if it is subsequently found to be incorrect as a result of an administrative error on the part of the Trustee and the Trustee will not be liable to the Member for any such rectification. The Trustee must notify the Member in writing of any such rectification.

28.3 Premiums for Policy

The premiums for any Policy effected may be debited to the Administration Account or directly to the Accumulation Account of the Member in respect of whom the Policy is effected or alternatively in such proportions amongst other Members as the Trustee considers to be equitable which premiums may be debited against the Member's Withdrawal Benefit.

28.4 **Limitations on Policy**

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member or Beneficiary then notwithstanding the Benefits which may be payable pursuant to this Deed in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member or Beneficiary as it shall determine. If cover has been declined by an Insurer in respect of a Member, the Trustee is under no obligation to arrange alternative insurance policies.

28.5 **Establishment of Advisory Panels**

The Trustee may establish one or more panels comprised of people it considers suitably qualified to advise it on matters arising in relation to any Insured Benefit and any other matters it considers necessary or desirable.

28.6 **Payment of Insured Benefit**

If and to the extent that any Insured Benefit is being provided, whether in respect of death or disability of a Member or otherwise, the Trustee shall not be obliged to make or commence payment of the Insured Benefit except as and to the extent that moneys for the Insured Benefit are received by the Trustee from the Insurer and credited to the Member's Accumulation Account.

28.7 **Recovery of Insured Benefit**

The Trustee shall take all reasonable steps to recover amounts due under any such insurance from the Insurer but shall not be obliged to do so unless either it considers an amount is due or it receives from the Member concerned (or from the Legal Personal Representative of the Member if deceased or otherwise incapacitated) such indemnities as it may require against any costs, claims or expenses which it may incur in respect of any actions for recovery of an amount which may be due.

PART 15

29. **OTHER SUPERANNUATION OBLIGATIONS**

Where at any time an obligation, whether compulsory or otherwise, is imposed upon a Participating Employer to make contributions to a superannuation fund providing retirement, death or disablement benefits in respect of Members of the Plan then the Participating Employer may, with the consent of the Trustee, reduce its Contributions to the Plan by the amount of the contributions being made to the other fund in respect of those Members (who are members of the other fund) and the Participating Employer may consult an actuary in respect of the amount of the reduction in Contributions to be made to the Plan.

PART 16

30. VARIATION OF TRUST DEED

The provisions of this Deed including this Clause may be added to, amended, altered, modified, rescinded or varied (the Variation) from time to time by the Trustee either prospectively or retrospectively on the following basis:

30.1 Deed

The Variation shall be by Deed executed by the Trustee and a copy of such Deed shall be forwarded to the Regulator and each Participating Employer if required by the Relevant Law.

30.2 Notice

On any Variation being effected, the Trustee shall if so required by the Relevant Law advise the Members and Beneficiaries in writing of the nature and purpose of the Variation and the effect on their entitlements or rights in accordance with and in the manner and time required under the Relevant Law.

30.3 Limitation on Variation

No Variation shall have the effect of:

- (1) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Plan which have arisen prior to the Variation being effected; or
- (2) reducing the amount of an entitlement other than an entitlement referred to in Clause 30.3(1) above that is or may become payable in relation to a period before the date of the Variation, unless:
 - (a) the reduction is required to enable the Plan to comply with the Relevant Law; or
 - (b) the Member so affected consents in writing to the reduction; or
 - (c) the Regulator consents in writing to the reduction,

PROVIDED THAT each Variation shall comply with the Relevant Law.

30.4 Further limitation on Variation

No Variation to this Deed shall:

- (1) have the effect of providing that the sole or primary purpose of the Plan is other than the provision of old-age pensions within the meaning of the Relevant Law, unless the Trustee of the Plan is a Constitutional Corporation or the Relevant Law otherwise permits; or
- (2) permit a person or body other than a Constitutional Corporation to be appointed as Trustee, unless the Deed provides that the sole or primary

purpose of the Plan is the provision of old-age pensions within the meaning of the Relevant Law or the Relevant Law otherwise permits.

30.5 **Omission**

Any accidental failure or omission to give the notification referred to in Clause 30.2 or its non-receipt shall not prejudice or invalidate the Variation.

PART 17

31. **WINDING UP OF PLAN**

31.1 **Election to Terminate**

The Trustee may elect to wind up the Plan at a certain date (the Termination Date) in the following circumstances:

- (1) if there are no further Members remaining in the Plan;
- (2) if the Trustee determines for any reason that the Plan should be wound up;
or
- (3) if it is required by the Regulator.

31.2 **Procedure on Winding Up of Plan**

Where the Plan is to be wound up the Trustee shall:

- (1) give written notice to each Participating Employer and Member that the Plan is to terminate on the Termination Date;
- (2) arrange to transfer the Benefits of Members to another Approved Benefit Arrangement which is a Successor Fund to the Plan without the consent of Members as permitted under the Relevant Law; or
- (3) arrange to pay or transfer Benefits to Members, former Members and Beneficiaries in accordance with Clause 31.3 below, after deducting from the assets of the Plan all the costs and expenses of administering and winding up the Plan.

31.3 **Exhaustion of Plan**

The Trustee shall pay the following Benefits in the following order to the extent that the assets of the Plan permit:

- (1) Benefits to which Members, former Members or their Dependants who have not been paid a Benefit immediately prior to the Termination Date are entitled at the Termination Date;
- (2) the provision of additional Benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion considers appropriate;

- (3) payment to such of the Participating Employers of Members or former Members (if any) as have made Contributions to the Plan as the Trustee in its absolute discretion shall determine.

PART 18

32. PAYMENT OF NON-PRESERVED AMOUNTS

Notwithstanding any other provisions of this Deed which may be construed to the contrary and subject to the Relevant Law:

- (1) Member Election
- a Member may elect at any time to withdraw the whole or any part of the Non-Preserved Amount of that Member by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time;
- (2) Minimum Payment
- the minimum Non-Preserved Amount which may be withdrawn by a Member pursuant to Clause 32(1) shall be determined by the Trustee and notified to Members of the Plan.

33. INCREASES TO BENEFITS

In circumstances where a Member ceases to be a Member of a Division of the Plan, the Trustee may determine to pay some part of the Equalisation Accounts which the Trustee considers represents the interest of that Member in that Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

34. RETENTION OF BENEFIT IN PLAN

34.1 Subject to Clause 34.2, where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable the in the Plan until:

- (1) Request
- (a) the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary; or
- (b) If the Member or Beneficiary entitled is a Member of Division 1 or 2 requests that it be transferred into Division 3 of the Plan.
- (2) Death
- The Member dies, in which event it will be paid in accordance with Clause 25;
- (3) Payment otherwise required

Payment of the Benefit is required in accordance with the provisions of this Deed or the Relevant Law; or

(4) Discretion

The Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary, whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of that Member's or Beneficiary's Account as at the date of payment PROVIDED HOWEVER that all Benefits must be paid at such time and in such manner as shall be required by the Relevant Law.

- 34.2 Where a Member or Beneficiary of Division 1 does not make a request to the Trustee within 60 days of ceasing Service with an Employer requiring Benefits to be immediately paid, the Trustee may in its absolute discretion transfer the Benefit into Division 2 until the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary.
- 34.3 The employer of a Member whose Benefits are transferred into Division 2 of the Plan pursuant to Clause 34.2 may make application pursuant to Clause 6.1 to become a Participating Employer to the Plan.
- 34.4 Where the Benefits of a Member or Beneficiary are retained in the Plan pursuant to Clause 34.2 all rights and entitlements of the Member or Beneficiary continue.

PART 19

FAMILY LAW ACT PROVISIONS

35. TRUSTEE TO PROVIDE INFORMATION

- 35.1 If the Trustee receives an application in the manner set out in Clause 35.2 from a FLA Eligible Person in respect of an Account of member for information about that account then the Trustee must provide the FLA Eligible Person the information about the Member's account and any other information as set out in the Relevant Law.
- 35.2 The application referred to in Clause 35.1 must be accompanied by:
- (1) a declaration, in the prescribed form as set out in the Relevant Law, stating that the applicant requires the information for either or both of the following purposes:
 - (a) to assist the applicant to properly negotiate a Superannuation Agreement;
 - (b) to assist the applicant in connection with the operation of the *Family Law Act 1975* in relation to the applicant; and
 - (2) the fee as determined by the Trustee for providing such information to the applicant.

- 35.3 The Trustee must not, in response to an application under Clause 35.1 by a Non Member Spouse, provide the Non Member Spouse with any address of the Member. For this purpose, address includes a postal address.
- 35.4 If the Trustee receives an application under Clause 35.1 from a person other than the Member, the Trustee must not inform the Member that the application has been received.
- 35.5 The Trustee shall provide such other information to a Non Member Spouse as is required pursuant to the Relevant Law.

36. PAYMENT FLAGS

- 36.1 If the Trustee receives a Payment Flag in respect of a Member's account then whilst the Payment Flag is operating, the Trustee must not make a Splittable Payment to any person from that Member's account.
- 36.2 If a Splittable Payment becomes payable in respect of a Member's account whilst a payment Flag is operating, the Trustee must within 14 days after the first Splittable Payment becomes payable give written notice to the Member and the Non Member Spouse of that fact and the Trustee must provide any other information as and when required under the Relevant Law.
- 36.3 If the Trustee receives notice of a Superannuation Agreement, Flag Lifting Agreement or a court order to terminate the Payment Flag pursuant to the Relevant Law, then the Trustee must comply with such Superannuation Agreement, Flag Lifting Agreement or a court order, as the case may be.

37. PAYMENT SPLITS

- 37.1 The Trustee must comply with the Relevant Law in transferring any amount or making a Payment Split from a Member's account to the Non Member Spouse or to such other account or fund as is allowable pursuant to the Relevant Law.
- 37.2 Any Non Member Spouse who is not already a Member may apply to the Trustee to become a Member and have any amount the subject of Payment Split from the Member's account into the Non Member Spouse's account as per the requirements of the Relevant Law.
- 37.3 A Non Member Spouse who becomes a Member may make Contributions to a Division in accordance with Clause 19.
- 37.4 If a new Account is established for the Non Member Spouse then the Trustee will comply with the Relevant Law in respect of the information that needs to be provided to the Non Member Spouse.
- 37.5 The Trustee must comply with the Relevant Law in respect of the payment, transfer, roll-over and creation of a new interest of a Non Member Spouse's interest in a Member's account including (but not limited to):
- (1) complying with any request received by the Non Member Spouse in respect of the Payment Split;

- (2) the determination of the minimum benefits for the Non Member Spouse and Member after the Payment Split;
- (3) the payment, transfer or roll-over of the Non Member Spouse's interest in Member's account into a new interest in the Plan, payment directly to the Non Member Spouse, transfer or roll over into another Complying Superannuation Fund, Approved Deposit Fund or Retirement Savings Account.

38. PAYMENTS THAT ARE NOT SPLITTABLE PAYMENTS

The Trustee will comply with the Relevant Law in dealing with a Member's Account if the Member's superannuation interest is not capable of being the subject of a Payment Split or the payments to the Member are not Splittable Payments.

39. FEES

39.1 In addition to any fees the Trustee may determine pursuant to Clause 16.2, the Trustee may charge reasonable fees in respect of any of the following:

- (1) a Payment Split;
- (2) a Payment Flag;
- (3) Flag Lifting under a Flag Lifting Agreement that does not provide for a Payment Split;
- (4) an order under the *Family Law Act 1975* terminating the operation of a Payment Flag;
- (5) any other thing done by the Trustee in relation to a superannuation interest covered by a Superannuation Agreement, Flag Lifting Agreement or Splitting Order;
- (6) an application under the *Family Law Act 1975* for information about a superannuation interest.

39.2 A fee payable in respect of a matter mentioned in Clauses 39.1(1) to 39.1(5) is payable:

- (1) subject to Clause 39.2(2), by the Member and the Non Member Spouse in equal parts; or
- (2) if the fee is in respect of a Payment Split under which the Non Member Spouse is entitled to be paid the whole of the amount of each Splittable Payment that becomes payable, by the Non-Member Spouse.

39.3 A fee payable in respect of an application mentioned in Clause 39.1(6) is payable by the person who makes the application.

PART 20

MYSUPER RULES

40. MYSUPER PRODUCT

- (1) Subject to the Relevant Law, the Trustee may establish or transfer from an Approved Benefit Arrangement one or more MySuper Products, provided that for each MySuper Product, the following rules apply:
- (a) a single diversified investment strategy is to be adopted in relation to each MySuper Product;
 - (b) all Members who hold a beneficial interest in a particular MySuper Product are entitled to access the same options, benefits and facilities as offered by that particular MySuper Product;
 - (c) any amounts that are attributed to Members in relation to their beneficial interest in a MySuper Product must be attributed in a way that does not stream gains or losses that relate to any assets of the Plan to only some of those members except to the extent allowable under the Relevant Law;
 - (d) in the event that any amounts may be attributed differently in respect of certain classes of Members who hold the same MySuper Product, the attributions of such amounts must not operate to favour some Members of such a class more favourably than other members of the same class;
 - (e) in circumstances allowable under the Relevant Law, any form of fee subsidisation by an Employer to a class of its Employees must not favour some Employees of such a class more favourably than other Employees of the same class;
 - (f) the Trustee must only accept Contributions in respect of MySuper Product as is allowable under the Relevant Law;
 - (g) a beneficial interest in respect of a MySuper Product cannot be replaced with a beneficial interest in any other MySuper Product or Choice Product unless the Member otherwise consents pursuant to the Relevant Law requirements;
 - (h) a beneficial interest in respect of a MySuper Product cannot be replaced with a beneficial interest in and other Approved Benefit Arrangement unless the replacement occurs pursuant to the Relevant Law requirements;
 - (i) no pension is payable out of a MySuper Product other than a benefit allowed under the Relevant Law; and
 - (j) the Trustee must ensure that it provides insurance benefits on such terms as required under the Relevant Law;

- (2) The trustee may only charge fees of the type, or exempt certain members from paying certain fees, as allowed under the Relevant Law.

(3) Lifecycle fee exemption

The Trustee may do either or both of the following:

- (a) allow gains and losses from different classes of assets of the Plan to be streamed to certain Members who hold a MySuper Product; and
- (b) charge certain Members an Investment Fee that differs to the Investment Fees that would otherwise be payable by other Members who hold a MySuper Product,

provided that those Members who are to benefit from the streaming of gains and losses or from the payment of different Investment Fees fall within any of the age cohorts listed in Schedule 1.

- (4) Subject to the Relevant Law, the Trustee may transfer Members' Accrued Default Amounts or any other amounts to a MySuper Product.

41. LARGE EMPLOYER MYSUPER PRODUCT

- (1) Subject to the Relevant Law, and the requirements under clause 40, the Trustee may establish one or more Large Employer MySuper Products, provided that for each Large Employer MySuper Product, the following rules apply:

- (a) a Large Employer MySuper Product may be established in respect of each Employer as listed in Schedule 1;
- (b) a Member may only hold an interest in a Large Employer MySuper Product if:
- (i) the Member is a current or former Employee of a Large Employer that has a Large Employer MySuper Product established in its name;
- (ii) the Member is a current or former Employee of an associate of a Large Employer that has a Large Employer MySuper Product established in its name; or
- (iii) the Member is a Relative or Dependant of a Member referred to in clause 40(1)(b)(i) or (ii);
- (c) where a Large Employer or an associate of the Large Employer contributes to the Plan or would, apart from a temporary cessation of Contributions, contribute to the Plan for an Employee of the Large Employer, any Employee of the Large Employer may hold an interest in a MySuper Product that has been established in that Large Employer's name; and
- (d) where a Large Employer or an associate of the Large Employer contributes to the Plan or would, apart from a temporary cessation

of Contributions, contribute to the Plan for an Employee of an associate of the Large Employer, any Employee of an associate may hold an interest in a MySuper Product that has been established in that Large Employer's name.

SECTION 2 - DIVISIONAL RULES

DIVISION 1 - RULES OF EMPLOYER SPONSORED PLAN

42. MEMBERSHIP AND APPLICATION OF DIVISION

42.1 Membership Criteria

The provisions of this Division shall apply to Members who are Employees and have been nominated in writing by a Participating Employer for Benefits under Clause 6.3(1) of this Deed.

42.2 Application of this Part

The Membership classification, Contributions payable by or in respect of, and the Benefits payable in respect of Members under this Division shall be exclusively determined in accordance with the provisions of this Division.

43. MEMBERSHIP CLASSIFICATION

There shall be four categories of Membership under this Division and Members shall be designated as Category A, B or C by their Local Government Council Employer or ordinary Members by their Participating Employer or Local Government Council Employer PROVIDED HOWEVER that a Participating Employer shall, with the consent of the Trustee, have the power to create such other Membership categories or classes with such rights, entitlements, conditions of eligibility and Benefits as the Participating Employer may determine.

44. CONTRIBUTIONS

44.1 Member Contributions

- (1) An ordinary Member may, with the agreement of the Trustee, contribute to the Division such amount as the Member shall determine subject to the provisions of Clause 20 (including any Contributions payable to a Division for or on behalf of his or her Spouse who is also a Member of the Plan) of this Deed.
- (2) A Category A, Category B or Category C Member must nominate and contribute either 4% or 5% of Salary to the Fund.
- (3) A Category A, B or C Member may elect in writing to either increase or decrease the contribution rate previously nominated to either the higher or lower percentage in sub-rule 3.1(2). This election will take effect in the next Financial Year.

44.2 Spouse Contributions

- (1) A Member may, with the agreement of the Trustee, contribute to the Division such amount as the Member shall determine subject to the

provisions of Clause 19 for or on behalf of his or her Spouse who is also a Member of the Plan.

- (2) A Spouse of a Member admitted to the Plan pursuant to Clause 6.3(3) of this Deed shall not be obliged to make Contributions to the Division for or on behalf of the Member but may do so if an agreement with the Trustee is made pursuant to this Deed.
- (3) The employer of a Spouse may make application to the Trustee under Clause 6.3 to become a Participating Employer to the Plan.

44.3 **Employer Contributions**

- (1) Subject to the Relevant Law, a Participating Employer shall, with the agreement of the Trustee, contribute to the Plan in respect of a Member such amounts as determined from time to time by the Participating Employer.
- (2) Subject to Rule 44.3(3), in addition to the Contributions made in respect of the Member under Rule 44.1 a Participating Employer may make additional Contributions in such amount (if any) as may be agreed between the Participating Employer and the Member.
- (3) A Participating Employer which is a Local Government Council must make the following minimum contributions in respect of the following categories of Members:

Category A

Such amount within the inclusive range of 2% to 5% of Salary nominated by the Employer plus any amount required to satisfy the Employer's obligation under the Guarantee Act;

Category B

1% of Salary plus any amount required to satisfy the Employer's obligation under the Guarantee Act;

Category C

Such amount of Salary required to satisfy the Employer's obligation under the Guarantee Act.

45. **PAYMENT OF BENEFITS**

45.1 **Lump Sum Payment**

Where a Member:

- (1) retires from Employment with a Participating Employer at or after the Normal Retirement Age; or
- (2) retires from an arrangement under which the Member was Gainfully Employed having attained the age of 60 years or such other age prescribed

for this purpose under the Relevant Law and the Member requests that the Benefit be paid; or

- (3) in the opinion of the Trustee becomes Totally and Permanently Disabled; or
- (4) reaches the age of 65 years; or
- (5) satisfies the Relevant Law for the payment of Benefits under this Rule notwithstanding that the Member continues in employment; or
- (6) satisfies the Relevant Law for the payment of Benefits,

then such Member may be paid the amount standing to the credit of the Accumulation Account of the Member as at the date upon which payment is made.

45.2 Pension Payment

Where a Member is eligible for payment of a Benefit in accordance with Rule 45.1(1) above and the Member elects to receive the Benefit as a Pension, the Trustee may transfer the Member's Benefit into Division 3.

46. TEMPORARY TOTAL DISABLEMENT

46.1 Recognition of Temporary Total Disablement

In the event that a Member shall become in the opinion of the Trustee Temporarily Totally Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee an income stream equal to the following amount in the case of a Member in respect of whom the Trustee receives an Insured Benefit under a Policy effected in relation to Temporary Total Disablement - the amount payable to the Trustee as a result of the Temporary Total Disablement of the Member under the Policy.

46.2 Ceasing to be Temporarily Totally Disabled

A Member shall cease to be Temporarily Totally Disabled in the event that the Member:

- (1) ceases to satisfy the definition of Temporary Total Disablement;
- (2) attains the Normal Retirement Age; or
- (3) dies.

46.3 Payment of Insured Benefit

An income Benefit under this Rule shall:

- (1) in the case of an Insured Benefit payable under a Policy be paid in accordance with, and shall cease in the circumstances set out in the Policy; and
- (2) in all cases comply with the requirements of the Relevant Law which are prescribed for this purpose from time to time.

46.4 Contribution Suspended

Payment of Contributions to the Plan by the Member (if any) may be suspended during such period in which any income Benefit is payable under this Clause.

46.5 Membership Continues

The Member will continue to be a Member of the Plan during the period in which the Member is Temporarily Totally Disabled and for the eligibility period as is specified in the Policy in respect of the Temporary Total Disablement and the aggregate of those periods will for the purpose of the Plan be deemed to be included in the Member's period of Membership of the Plan.

47. EARLY RETIREMENT FROM EMPLOYMENT

In the event of a Member, for any reason other than death or Total and Permanent Disablement:

- (1) ceases to be an Employee of a Participating Employer prior to the Normal Retirement Age and the Member is at least the Preservation Age; or
- (2) retires from Gainful Employment,

the Trustee must, unless that Member applies to or is admitted by the Trustee to participate in the Plan as a Member under Division 2 or 3 of this Deed, pay to the Member the amount standing to the credit of the Accumulation Account of the Member as at the date upon which payment is made. Should the Member request the amount payable to be transferred to an Approved Benefit Arrangement then the payment shall be made in accordance with Clause 20 of this Deed.

48. LATE RETIREMENT FROM EMPLOYMENT

- (1) Subject to the Relevant Law, a Member who remains in the employment of an Employer after the Member attains the Normal Retirement Age may with the consent of the Participating Employer continue to make Contributions to the Plan in accordance with Rule 44.1.
- (2) Subject to the Relevant Law, a Participating Employer may with the consent of the Trustee continue to make Contributions to the Plan in respect of a Member who remains in the employment of the Participating Employer after the Member attains the Normal Retirement Age in accordance with Rule 44.3.

49. [DELIBERATELY LEFT BLANK]**50. PAYMENT ON DEATH****50.1 Lump Sum Benefits**

On the death of a Member whilst still a Member the Trustee shall pay the full amount standing to the credit of the Member's Accumulation Account as at the date upon which payment is made in accordance with the provisions of Clause 25 of the Deed.

50.2 Pension Benefit

Subject to the Relevant Law, if the Trustee determines that a Beneficiary is to be paid a Benefit on the death of a Member in accordance with Clause 25 of the Deed, it may, with the consent of the Beneficiary, transfer that Benefit to Division 3.

DIVISION 2 - RULES OF PERSONAL PLAN

51. MEMBERSHIP AND APPLICATION OF DIVISION

These Rules apply to Members who are Employees who have transferred from Division 1, Employees in respect of whom no Employer makes Contributions or Employees who have been nominated by a Participating Employer for Membership of this Division or for any Eligible Person admitted as a Member to this Plan established under Clause 6.5 of this Deed.

52. APPLICATION OF THIS DIVISION

The Membership classification, the Contributions payable by or in respect of, and the Benefits payable in respect of Members under this Division shall be exclusively determined in accordance with the provisions of this Division PROVIDED THAT a Member under this Division who is an Employee of a Participating Employer shall not be precluded from becoming a Member of Division 1.

53. MEMBERSHIP CLASSIFICATION

There shall be one class of Membership under this Division and Members shall be designated as ordinary Members PROVIDED HOWEVER that the Trustee shall have the power to create such other Membership classes with such rights, costs and entitlements, conditions of eligibility and Benefits as the Trustee shall determine.

54. CONTRIBUTIONS

54.1 Member Contributions

A Member may, with the agreement of the Trustee, contribute to the Division such amount as the Member shall determine subject to the provisions of Clause 20 (including any Contributions payable to a Division for or on behalf of his or her Spouse who is also a Member of the Plan) of this Deed.

54.2 Spouse Contributions

- (1) A Member may, with the agreement of the Trustee, contribute to the Division such amount as the Member shall determine subject to the provisions of Clause 19 for or on behalf of his or her Spouse who is also a Member of the Plan.
- (2) A Spouse of a Member admitted to the Plan pursuant to Clause 6.3(3) of this Deed shall not be obliged to make Contributions to the Division for or on behalf of the Member but may do so if an agreement with the Trustee is made pursuant to this Deed.
- (3) The employer of a Spouse may make application to the Trustee under Clause 6.3 to become a Participating Employer to the Plan.

54.3 **Employer Contributions**

An Employer may, with the agreement of the Trustee, contribute to the Plan in respect of a Member such amount determined from time to time by the Employer subject to the provisions of Clause 19 of this Deed.

55. **PAYMENT OF BENEFITS**

55.1 **Lump Sum Payment**

Where a Member:

- (1) retires from Employment with a Participating Employer at or after the Normal Retirement Age; or
- (2) retires from an arrangement under which the Member was Gainfully Employed having attained the age of 60 years or such other age prescribed for this purpose under the Relevant Law and the Member requests that the Benefit be paid; or
- (3) in the opinion of the Trustee becomes Totally and Permanently Disabled; or
- (4) reaches the age of 65 years; or
- (5) satisfies the Relevant Law for the payment of Benefits under this Rule notwithstanding that the Member continues in employment; or
- (6) satisfies the Relevant Law for the payment of Benefits,

then such Member may be paid the amount standing to the credit of the Accumulation Account of the Member as at the date upon which payment is made.

55.2 **Pension Payment**

Where a Member is eligible for payment of a Benefit in accordance with Rule 55.1(1) above and the Member elects to receive the Benefit as a Pension, the Trustee may transfer the Member's Benefit into Division 3.

56. **TEMPORARY TOTAL DISABLEMENT**

56.1 **Recognition of Temporary Total Disablement**

In the event that a Member shall become in the opinion of the Trustee Temporarily Totally Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee a income stream equal to the following amount in the case of a Member in respect of whom the Trustee receives an income Benefit under a Policy effected in relation to Temporary Total Disablement - the amount payable to the Trustee as a result of the Temporary Total Disablement of the Member under the Policy.

56.2 **Ceasing to be Temporarily Totally Disabled**

A Member shall cease to be Temporarily Totally Disabled in the event that the Member:

- (1) ceases to satisfy the definition of Temporary Total Disablement;
- (2) attains the Normal Retirement Age; or
- (3) dies.

56.3 **Payment of Income Benefit**

An income Benefit under this Rule shall:

- (1) in the case of a Benefit payable under a Policy be paid in accordance with, and shall cease in the circumstances set out in the Policy; and
- (2) in all cases comply with the requirements of the Relevant Law which are prescribed for this purpose from time to time.

56.4 **Contribution Suspended**

Payment of Contributions to the Plan by the Member (if any) may be suspended during such period in which any income Benefit is payable under this Clause.

56.5 **Membership Continues**

The Member will continue to be a Member of the Plan during the period in which the Member is Temporarily Totally Disabled and for the eligibility period as is specified in the Policy in respect of the Temporary Total Disablement and the aggregate of those periods will for the purpose of the Plan be deemed to be included in the Member's period of Membership of the Plan.

57. **EARLY RETIREMENT FROM EMPLOYMENT**

In the event of a Member, for any reason other than death or Total and Permanent Disablement:

- (1) ceases to be an Employee of a Participating Employer prior to the Normal Retirement Age and the Member is at least the Preservation Age; or
- (2) retires from Gainful Employment,

the Trustee must, unless that Member applies to or is admitted by the Trustee to participate in the Plan as a Member under Divisions 1 or 3 of this Deed, pay to the Member the amount standing to the credit of the Accumulation Account of the Member as at the date upon which payment is made. Should the Member request the amount payable to be transferred to an Approved Benefit Arrangement then the payment shall be made in accordance with Clause 20 of this Deed.

58. **LATE RETIREMENT FROM EMPLOYMENT**

- (1) Subject to the Relevant Law, a Member who remains in the employment of an Employer after the Member attains the Normal Retirement Age may with the consent of the Participating Employer continue to make Contributions to the Plan in accordance with Rule 54.1.

- (2) Subject to the Relevant Law, a Participating Employer may with the consent of the Trustee continue to make Contributions to the Plan in respect of a Member who remains in the employment of the Participating Employer after the Member attains the Normal Retirement Age in accordance with Rule 54.3.

59. [DELIBERATELY LEFT BLANK]

60. PAYMENT ON DEATH

60.1 Lump Sum Benefits

On the death of a Member whilst still a Member the Trustee shall pay the full amount standing to the credit of the Member's Accumulation Account as at the date upon which payment is made in accordance with the provisions of Clause 25 of the Deed.

60.2 Pension Benefit

Subject to the Relevant Law, if the Trustee determines that a Beneficiary is to be paid a Benefit on the death of a Member in accordance with Clause 25 of the Deed, it may, with the consent of the Beneficiary, transfer that Benefit to Division 3.

DIVISION 3 - RULES OF PENSION PLAN

61. MEMBERSHIP AND APPLICATION OF DIVISION

61.1 Membership Criteria

The provisions of this Division shall apply to persons with an a Roll Over Payment who make an application for Membership pursuant to Part 3 of this Deed or Members who have elected to receive a pension benefit and have been transferred from Division 1 or Division 2.

61.2 Application of this Division

The Membership classification, the Contributions payable by and in respect of, and the Benefits payable in respect of Members under this Division should be exclusively determined in accordance with the provisions of this Division.

62. MEMBERSHIP CLASSIFICATION

There shall be one class of Membership under this Division and Members shall be designated as ordinary Members PROVIDED HOWEVER the Trustee shall have the power to create such other Membership classes with such rights and entitlements as the Trustee shall determine.

63. CONTRIBUTIONS

A Member may only make such contributions or rollovers to this Division as are permitted by the Relevant Law.

64. PENSION PAYMENT AND PENSION ACCOUNT

64.1 Application to Convert to Pension

At such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary under the terms of this Deed in accordance with the Relevant Law the Trustee may at the request of the Member or Beneficiary but otherwise in its absolute discretion determine to pay a Pension or Pensions from the Plan to the Member or Beneficiary (as the case might be) on the conditions set out in Rule 65 or Rule 66 or any other terms and conditions specified under the Relevant Law:

- (1) in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
- (2) in respect of any amounts credited to the Pension Account of a Member or Beneficiary under Rule 64.3(1)(b).

64.2 Establishment of Pension Account

Where a Member or a Beneficiary has made an application under Rule 64.1 above and the Trustee determines to pay all or any part of the Benefit to the Member or the Beneficiary as a Pension, the Trustee must establish one or more Pension Accounts

in respect of the Member or the Beneficiary to which Accounts the Trustee shall transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.

64.3 Operation of Pension Account

- (1) The following amounts shall be credited to the Pension Account of a Pensioner:
 - (a) any amount transferred under Rule 64.2 above;
 - (b) any amount paid into the Plan in respect of a Pensioner as a transfer or a Roll Over Payment which the Trustee considers it appropriate to credit;
 - (c) the proceeds of any Policy effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
 - (d) such earnings of the Plan ascertained in accordance with Clauses 9.4 and 12.5(5) of this Deed as the Trustee shall determine to be equitable;
 - (e) any credit arising out of any adjustments made in accordance with Clause 9.7 of this Deed;
 - (f) any Shortfall Component paid in respect of the Pensioner;
 - (g) any amount of Financial Assistance determined by the Trustee to be appropriate to credit.
 - (h) Any tax offset for the refund of taxation levied on No-TFN Contributions Income;
 - (i) Any other amounts as the Trustee determines.
- (2) The following amounts are to be debited to the Pension Account of a Pensioner:
 - (a) any amount transferred out of the Plan in respect of a Pensioner as a transfer of a Roll Over Payment which the Trustee considers it appropriate to debit;
 - (b) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
 - (c) the costs of any Policy effected by the Trustee in respect of the Pensioner which are not debited to an Accumulation Account in accordance with Clause 9.3 of this Deed;
 - (d) such proportion of any amount payable by way of Taxation in respect of the earnings of the Plan credited to the Pension Account of a Pensioner or arising as a result of a Roll Over Payment as the Trustee shall determine;

- (e) such of the costs, charges and expenses incurred in accordance with Clause 16 of this Deed as the Trustee shall determine to be equitable;
- (f) such of the amount paid in respect of the Trustee indemnity set out in Clause 15 of this Deed as the Trustee shall determine to be equitable;
- (g) a proportion of any loss sustained on the disposal of any investments of the Plan as the Trustee shall determine to be equitable;
- (h) such negative earnings of the Plan ascertained in accordance with Clauses 9.4 and 12.5(5) of this Deed as the Trustee shall determine to be equitable;
- (i) any amount transferred to the Accumulation Account of a Beneficiary;
- (j) any amount of Levy determined by the Trustee to be appropriate to debit;
- (k) such other amounts as the Trustee shall from time to time determine.

64.4 Segregation of Pension Assets

In relation to each Pension payable to a Member or a Beneficiary, the Trustee may:

- (1) segregate or set apart the assets which represent the Pension Account of the Member or Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
- (2) constitute the segregated assets as segregated current and non-current pension assets within the meaning of the Tax Act and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Law shall require.

64.5 Pension Account Limitation

Where a Pension is payable to or in respect of a Member or a Beneficiary or where the Trustee purchases an Annuity on behalf of a Member or a Beneficiary, the total instalments of such Pension or the total purchase price of such Annuity shall, subject to Clause 26.12 of this Deed, not exceed the amount standing to the credit of a Member or Pensioner in the relevant Accumulation Account or Pension Account of the Member or Pensioner at the relevant time.

64.6 Pension Increase

Any Pension payable pursuant to the provisions of this Deed shall, if required by the Relevant Law and agreed to by the Trustee, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases PROVIDED

HOWEVER that any increase shall be at least the minimum required by the Relevant Law in respect of the type of Pension being paid.

64.7 Nominated Reversionary Beneficiary

- (1) A Member must notify the Trustee of the name and address of any Dependant to whom the Member wishes any Reversionary Pension payable upon the Member's death to be paid.
- (2) A Member may upon admission to this Division and from time to time thereafter in a manner approved by the Trustee give the Trustee a Death Benefit Notice in relation to a Reversionary Beneficiary or;
- (3) The nomination in this Rule:
 - (a) may be varied or replaced from time to time in the manner approved by the Trustee; and
 - (b) is not binding upon the Trustee, but the Trustee may consider the nomination when exercising any of its discretions under the Rules.

64.8 Reversionary Beneficiary

After the death of a Pensioner who was at the time of death still in receipt of a Pension under this Deed, the Trustee may in its discretion determine to pay to the Reversionary Beneficiary a Pension or a lump sum Benefit which amount shall not exceed an amount calculated in accordance with the Relevant Law.

64.9 Death of Pensioner

In the event of the death of a Pensioner whilst there is still an amount standing to the credit of the Pension Account of the Pensioner and where no Reversionary Beneficiary has been nominated the balance of such Pension Account shall be dealt with in accordance with the provisions of Clause 25 of this Deed PROVIDED HOWEVER that in the event that such an application is not in accordance with the Relevant Law the balance of such Pension Account shall be dealt with in accordance with Clauses 23.3 and 23.4 of this Deed as though it were a forfeited Benefit or otherwise as permitted by the Relevant Law.

64.10 Pensions may be paid in other forms

The Trustee shall also have the discretion to pay Pensions in any form permitted by the Relevant law which may include forms other than those specifically referred to in this Deed.

64.11 Trustee may change Pension Terms

The Trustee has full discretion to offer the Pensions on terms which are consistent with the Relevant Law and may therefore offer Pensions on terms which reflect changes in the Relevant Law without being required to amend the terms of this Deed or may further change the terms of a Pension which has already commenced without being required to amend the terms of the Deed.

65. ALLOCATED PENSION

65.1 Method of Payment and Security

Where an Allocated Pension is payable from the Plan, the following conditions shall apply to the payment of the Pension:

- (1) the Pension shall be paid from the amount standing to the credit of the Pension Account of the Pensioner;
- (2) the Pension shall be paid at least annually;
- (3) the amount of the Pension in any year shall be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time PROVIDED THAT the amount shall not be greater than or lesser than the amounts calculated as the maximum and minimum limits specified by the Relevant Law for the payment of a Pension;
- (4) the Pension shall not be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner or on the death of a Reversionary Beneficiary or shall only be transferred upon such other terms as shall be acceptable under the Relevant Law;
- (5) the capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing;
- (6) if the commencement day of the Pension occurs before 1 June in the financial year then there must be an amount paid, calculated pro rata on a daily basis during that financial year.

66. MARKET-LINKED PENSION

- (1) If the Trustee determines to pay a Market-Linked Pension on or after 20 September 2004 then the terms upon which the Pension is payable shall be as determined by the Trustee in consultation with the Pensioner provided that the following subclauses of this Rule 64 shall be met.
- (2) The Pension shall be in accordance with the following:
 - (a) the Market-Linked Pension:
 - (i) is paid at least annually to the Pensioner or to a Reversionary Beneficiary throughout a period equal to the Pensioner's life expectancy on the commencement day of the Pension, rounded up to the next whole number if Pensioner's life expectancy does not consist of a whole number of years; or
 - (ii) is paid at least annually to the Pensioner or to a Reversionary Beneficiary throughout a period equal to the Pensioner's life expectancy mentioned in subparagraph (i) calculated, at the option of the Pensioner, as if the Pensioner were up to 5 years younger on the commencement day; or

(iii) is commenced on or after 1 January 2006 and is paid at least annually to the Pensioner or a Reversionary beneficiary for a period not less than (i) above and no longer than the greater of the period calculated under (ii) above and the period from the Pensioner's most recent birthday before the Pension commences until the date upon which the Pensioner would attain 100 years of age; or

(iv) if:

- (A) the Pension is a pension that reverts to the Pensioner's Spouse on the death of the Pensioner; and
- (B) the life expectancy of the Pensioner's Spouse is greater than the life expectancy of the Pensioner; and
- (C) the Pensioner has not chosen to make an arrangement mentioned in subparagraph (i) or (ii) for the Pension;

the Pension is paid at least annually to the Pensioner or to a Reversionary Beneficiary throughout a period equal to:

- (D) the life expectancy of the Pensioner's Spouse on the commencement day; or
- (E) the life expectancy of the Pensioner's Spouse calculated, at the option of the Pensioner, as if the Spouse were up to 5 years younger on the commencement day;

at the option of the Pensioner, and rounded up to the next whole number if the life expectancy of the Pensioner's Spouse does not consist of a whole number of years; and

- (F) where the Pension is commenced on or after 1 January 2006, a period not less than (D) above and no longer than the greater of the period which is calculated under (E) above and the period from the Spouses most recent birthday before the Pension commences until the date the Pensioners Spouse would attain 100 years of age;

at the option of the Pensioner, and rounded up to the next whole number is the life expectancy of the Pensioners Spouse, or the period, does not consist of a whole number of years; and

- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made

under a Payment Split) is determined in accordance with Schedule 6 of the SIS Regulations; and

- (c) the Market-Linked Pension does not have a residual capital value; and
- (d) the Market-Linked Pension cannot be commuted except:
 - (i) if the Pension:
 - (A) is not funded from the commutation of:
 - (I) an Annuity that is provided under a contract that meets the standards of SIS Regulations 1.05 (2), (3), (9) or (10); or
 - (II) another pension that is provided under rules that meet the standards of SIS Regulation 1.06(8), or SIS Regulations 1.06 (2), (3) or (7); or
 - (III) another pension that is provided under terms and conditions that meet the standards of Regulation 1.07 (3A) of the RSA Regulations; and
 - (B) the commutation is made within 6 months after the commencement day of the Pension; or
 - (ii) subject to subparagraph (iii), on the death of the Pensioner or Reversionary Beneficiary, by payment of:
 - (A) a lump sum benefit or a new Pension to one or more Dependants of either the Pensioner or Reversionary Beneficiary; or
 - (B) a lump sum benefit to the Legal Personal Representative of either the Pensioner or the Reversionary Beneficiary; or
 - (C) if, after making reasonable enquiries, the provider of the Pension is unable to find a person mentioned in sub-subparagraph (A) or (B), a lump sum benefit to another individual; or
 - (iii) for subparagraph (ii), if the Pensioner has opted, under subparagraph (a) (iii), for a period worked out in relation to the life expectancy or age of the Pensioner's Spouse , the Market-Linked Pension cannot be commuted until the death of both the Pensioner and the Pensioner's Spouse; or
 - (iv) a Superannuation Lump Sum resulting from the commutation is transferred directly to the purchase of another benefit that is:

- (A) an Annuity provided under a contract that meets the standards of SIS Regulations 1.05 (2), (3), (9) or (10); or
 - (B) a pension that is provided under rules that meet the standards of SIS Regulation 1.06(8) or SIS Regulations 1.06 (2), (3) or (7); or
 - (C) pension that is provided under terms and conditions that meet the standards of Regulation 1.07 (3A) of the RSA Regulations; or
- (v) to pay a superannuation contributions surcharge; or
 - (vi) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; and
- (e) if the Market-Linked Pension reverts, it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and
 - (f) if the Market- Linked Pension is commuted, the commutation amount cannot exceed the account balance immediately before the commutation; and
 - (g) the Market-Linked Pension can be transferred only:
 - (i) on the death of the Pensioner:
 - (A) to one of the Dependants of the Pensioner; or
 - (B) to the Legal Personal Representative of the Pensioner; or
 - (ii) on the death of the Reversionary Beneficiary:
 - (A) to one of the Dependants of the Reversionary Beneficiary; or
 - (B) to the Legal Personal Representative of the Reversionary Beneficiary; and
 - (h) the capital value of the Market-Linked Pension, and the income from it, cannot be used as security for a borrowing.
- (3) If the commencement day of the Market-Linked Pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.
 - (4) Despite regulation 9 of the Income Tax Regulations 1936, for a Pension that has a commencement day on or after 20 September 2004 and on or before 31 December 2004, one of the following life tables are to be used in ascertaining the life expectancy of a person under this regulation:
 - (a) the most recently published Australian Life Tables;

- (b) the 1995-97 Australian Life Tables.
- (5) The minimum amount for the Market-linked Pension required to be paid under the Relevant Law must be paid in the financial year in which a commutation takes place unless:
- (a) The commutation results from the death of the Pensioner or a Reversionary Beneficiary; or
 - (b) The sole purpose of the commutation is;
 - (i) To pay a superannuation contribution surcharge; or
 - (ii) To give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (iii) To meet the rights of a Member to return a financial product under the *Corporations Act 2001*; or
 - (c) Where there is a partial commutation the account balance of the Pension is equal to or greater than the minimum balance required by the Relevant Law after the commutation.

67. COMMUTATION OF PENSION

67.1 Conditions of Commutation

Subject to Part 19, on the written application of a Pensioner or Reversionary Beneficiary, the Trustee may commute to a lump sum Benefit the whole or any part of a Pension payable from the Plan to such Pensioner or Reversionary Beneficiary as applicable PROVIDED THAT:

- (1) the commutation of the Pension is permitted by the Relevant Law;
- (2) the Trustee determines the amount of the lump sum payable in respect of the Pension being commuted and may for that purpose obtain the advice of the Actuary;
- (3) the amount of the commuted Benefit including the value of any remaining Pension payable shall be subject to the provisions of Clause 26.12;
- (4) where any amount remains in the Plan after the entitlement of all Pensioners and Reversionary Beneficiaries have been paid out then the amount so remaining shall be dealt with in accordance with Clauses 23.3 and 23.4 of this Deed as though it were a forfeited Benefit; and
- (5) in the opinion of the Trustee, the commutation would not be to the disadvantage of the Plan, the Employers, the remaining Members, Pensioners or Reversionary Beneficiaries.

67.2 Payment of Lump Sum Benefit

The Trustee shall pay the amount of the lump sum Benefit in respect of the Pension being commuted to the Pensioner or the Reversionary Beneficiary who applied for the commutation but subject to any other applicable provisions of this Deed.

67.3 Adjustment of Pension following the Commutation

Following the commutation of a part of a Pension, the Trustee shall reduce the total amount of the instalments of any Pension payable to the Pensioner by such amount as it considers appropriate.

DIVISION 4 – RULES OF ACCOUNT BASED PENSION PLAN

68. MEMBERSHIP AND APPLICATION OF DIVISION

Membership Criteria

The provisions of this Division shall apply to persons with a Roll Over Payment who makes an application for Membership pursuant to Part 3 of this Deed or Members who have elected to receive a pension benefit and have been transferred from Division 1, Division 2, or Division 3.

Application of this Division

The Membership classification, the Contributions payable by and in respect of, and the Benefits payable in respect of Members under this Division should be exclusively determined in accordance with the provisions of this Division.

69. MEMBERSHIP CLASSIFICATION

There shall be one class of Membership under this Division and Members shall be designated as ordinary Members PROVIDED HOWEVER the Trustee shall have the power to create such Membership classes with such rights and entitlements as the Trustee shall determine.

70. CONTRIBUTIONS

A Member may only make such Contributions or rollovers to this Division as are permitted by the Relevant Law.

71. PENSION PAYMENT AND PENSION ACCOUNT

71.1 Application to Convert to Pension

At such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary under the terms of this Deed in accordance with the Relevant Law the Trustee may at the request of the Member or Beneficiary but otherwise in its absolute discretion determine to pay a Pension or Pensions from the Plan to the Member or Beneficiary (as the case might be) on the conditions set out in Rule 72 and Rule 73:

- (1) in lieu of the whole or a proportion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
- (2) in respect of any amounts credited to the Pension Account of a Member or Beneficiary under Rule 71.3(1)(b).

71.2 Establishment of Pension Account

Where a Member or a Beneficiary has made an application under Rule 69 above and the Trustee determines to pay all or any part of the Benefit to the Member or the

Beneficiary as a Pension, the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which Accounts the Trustee shall transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.

71.3 Operation of Pension Account

- (1) The following amounts shall be credited to the Pension Account of a Pensioner:
 - (a) any amount transferred under Rule 69.2 above;
 - (b) any amount paid into the Plan in respect of a Pensioner as a transfer or a Roll Over Payment which the Trustee considers it appropriate to credit;
 - (c) the proceeds of any Policy effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
 - (d) such earnings of the Plan ascertained in accordance with Clauses 9.4 and 12.5(5) of this Deed as the Trustee shall determine to be equitable;
 - (e) any credit arising out of any adjustments made in accordance with Clause 9.7 of this Deed;
 - (f) any Shortfall Component paid in respect of the Pensioner;
 - (g) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
 - (h) such other amounts as the Trustee shall from time to time determine.
- (2) The following amounts are to be debited to the Pension Account of a Pensioner;
 - (a) any amount transferred out of the plan in respect of a Pensioner as a transfer of a Roll Over Payment which the Trustee considers it appropriate to debit;
 - (b) any payments made to it or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
 - (c) the costs of any Policy effected by the Trustee in respect of the earnings of the Plan credited to the Pension Account of a Pensioner or arising as a result of a Roll Over Payment as the Trustee shall determine;
 - (d) such proportion of any amount payable by way of Taxation in respect of the earnings of the Plan credited to the pension Account of a Pensioner or arising as a result of a Roll over Payment as the Trustee shall determine;

- (e) such of the costs, charges and expenses incurred in accordance with Clause 16 of this Deed as the Trustee shall determine to be equitable;
- (f) such of the amount paid in respect of the Trustee indemnity set out in Clause 15 of this Deed as the Trustee shall determine to be equitable;
- (g) a proportion of any loss sustained on the disposal of any investments of the Plan as the Trustee shall determine to be equitable;
- (h) such negative earnings of the Plan ascertained in accordance with Clauses 9.4 and 12.5(5) of this Deed as the Trustee shall determine to be equitable;
- (i) any amount transferred to the Accumulation Account of a Beneficiary;
- (j) any amount of Levy determined by the Trustee to be appropriate to debit;
- (k) such other amounts as the Trustee shall from time to time determine.

71.4 Segregation of Pension Assets

In relation to each Pension payable to a Member or a beneficiary, the Trustee may:

- (1) segregate or set apart the assets which represent the Pension Account of the Member or Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
- (2) constitute the segregated assets as segregated current and non-current pension assets within the meaning of the Tax Act and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non-current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Law shall require.

71.5 Pension Account Limitation

Where a Pension is payable to or in respect of a Member or Beneficiary or where the Trustee purchases an Annuity on behalf of the Member or Beneficiary, the total instalments of such Pension or the total purchase price of such Annuity shall, subject to Clause 26.12 of this Deed, not exceed the amount standing to the credit of a Member or Pensioner in the relevant Accumulation Account or Pension Account of the Member or Pensioner at the relevant time.

71.6 Pension increase

Any Pension payable pursuant to the provisions of this Deed shall, if required by the Relevant Law and agreed to by the Trustee, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases PROVIDED

HOWEVER that any increase shall be at least the minimum required by the Relevant Law in respect of the type of Pension being paid.

71.7 **Nominated Reversionary Beneficiary**

- (1) A Member must notify the Trustee of the name and address of any Dependant to whom the Member wishes any Reversionary Pension payable upon the Member's death to be paid
- (2) A Member may upon admission to this Division and from time to time thereafter in a manner approved by the Trustee give the Trustee a Death Benefit Notice in relation to a Reversionary Beneficiary; or
- (3) The nomination in this Rule:
 - (a) may be varied or replaced from time to time in the manner approved by the Trustee; and
 - (b) is not binding upon the Trustee, but the Trustee may consider the nomination when exercising any of its discretions under the Rules.

71.8 **Reversionary Beneficiary**

After the death of a Pensioner who was at the time of death still in receipt of a Pension under this Deed, the Trustee may in its discretion determine to pay to the Reversionary Beneficiary a Pension or a lump sum Benefit which amount shall not exceed an amount calculated in accordance with the Relevant Law.

71.9 **Death Benefits paid as a Pension**

If a death Benefit is paid in the form of a Pension it will only be paid to those Dependents or others eligible to receive the Pension in accordance with the Relevant Law.

72. ACCOUNT BASED PENSION

72.1 If the Trustee determines to pay an Account Based Pension the terms upon which the Pension is payable shall be as determined by the Trustee in consultation with the Pensioner provided that the following requirements of this Rule 72 be met.

72.2 The Pension shall be in accordance with the following:

- (1) the total amount of the payments in a year (excluding payments by way of commutation but including payments made under a Payment Split) is determined in accordance with the Relevant Law
- (2) is transferable only to another person on the death of the Pensioner; and
- (3) cannot have either the capital value of the Pension or the income from its used as security for a borrowing; and
- (4) upon the death of the Pensioner must not continue to be paid as a Pension to:

- (a) an adult Child at least 25 years of age (unless they have a disability); or
 - (b) a child between the ages of 18 and 24 who was not a financial dependant on the Pensioner; or
 - (c) the Legal Personal Representative of the estate of the Pensioner; and
- (5) cannot be commuted in whole or in part except in the following circumstances:
- (a) where the Pensioner has died; or
 - (b) where the sole purpose of the commutation is to:
 - (i) pay a superannuation contributions surcharge; or
 - (ii) give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (iii) meet the rights of a person to return a financial product under the Relevant Law; or
 - (c) where there is a partial commutation, the account balance of the Pension after the is equal to or greater than the minimum balance required by the Relevant Law after the commutation; or
 - (d) the minimum amount required to be paid under the Relevant Law has been paid in the financial year in which the commutation takes place; and
- (6) does not require a minimum payment in a financial year where that Pension commences after 1 June in that financial year unless the Relevant Law otherwise requires; and
- (7) cannot be added to by way of Contribution or by way of a Roll Over Payment.

73. TRANSITION TO RETIREMENT INCOME STREAM AT PRESERVATION AGE

Where a member attains his or her Preservation Age but does not retire from Gainful employment the Trustee may offer an Account Based Pension on the terms specified in Rule 72 except that:

- (1) the Account Based Pension cannot be commuted to a superannuation Lump Sum unless:
 - (a) the purpose of the commutation is:
 - (i) to cash an unrestricted non-preserved benefit; or
 - (ii) to pay a superannuation contributions surcharge; or

- (iii) to give the effect to an entitlement of a Non Member Spouse under a Payment Split; or
 - (b) before the commutation the Pensioner has satisfied a condition of release in respect of which the cashing restriction for Preserved Payment Benefits and restricted non-preserved benefits is "nil", and
- (2) the total Pension payments made in a financial year to a Pensioner for a Transition to Retirement Income Stream must be:
 - (a) no more than 10% of the Pension Account balance on 1 July in the financial year in which the payment is made; or
 - (b) if the relevant financial year is the year in which the Pension commences no more than 10% of the Pension Account balance on the commencement day; or
 - (c) such other amount or amounts as required under the Relevant Law.

SCHEDULE 1 - MYSUPER RULES

74. AGE COHORTS

For the purposes of clause 40(3), the following age cohorts apply:

- (a)
- (b)
- (c)
- (d)

75. LARGE EMPLOYERS

For the purposes of clause 41(1)(a), the following Employers are deemed to be Large Employers:

- (a)
- (b)
- (c)
- (d)

Signing page

EXECUTED as a Deed.

Executed by **WA LOCAL
GOVERNMENT SUPERANNUATION
PLAN PTY LTD** ABN 64 066 797 162
In accordance with section 127 of the
Corporations Act 2001:



A handwritten signature in blue ink, appearing to read "John McNally", written over a horizontal line.

Company secretary

John McNally
Name of Company Secretary

A handwritten signature in blue ink, appearing to read "Timothy Shanahan", written over a horizontal line.

Director

TIMOTHY SHANAHAN
Name of director
(BLOCK LETTERS)