

**AGEST SUPER PTY LTD
ACN 007 390 392**

as trustee of the

**AUSTRALIAN GOVERNMENT EMPLOYEES
SUPERANNUATION TRUST
("AGEST")**

established 22 June 1990

CONSOLIDATED TRUST DEED

Incorporating Amending Deeds made:

**10 February 1992
25 February 1993
18 February 1994
9 May 1995
26 June 1997
20 May 1998
9 June 1999
9 June 1999
5 March 2002 (effective from 19 January 2002)
9 May 2002 (effective from 1 October 2000)
10 August 2004
8 February 2005
9 December 2005
10 December 2008**

IFS LEGAL

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**AUSTRALIAN GOVERNMENT EMPLOYEES SUPERANNUATION TRUST
CONSOLIDATED TRUST DEED FROM 10 DECEMBER 2008**

THIS TRUST DEED is made on the 22nd day of June 1990

BY: ABTOURK (VIC No. 20) PTY LTD now known as AGEST SUPER PTY LTD (ACN 007 390 392) a company incorporated in the State of Victoria and having its registered office at Level 3, 4 Riverside Quay, Southbank in the said State but originally at ACTU House, 393 - 397 Swanston Street, Melbourne in the said State (“the Trustee”)

WHEREAS:

- A. The Trustee has decided to establish and maintain a fund solely for the purpose of providing benefits of the kind set out in this Deed.
- B. Designated Employers are required by the Superannuation (Productivity Benefit) Act 1988 to make contributions to the Fund on behalf of Remainder Employees unless they have made elections for the purposes of sub-section 4C(2) of that Act.
- C. The Trustee has agreed to act as Trustee of the fund.

NOW IT IS HEREBY AGREED AND DECLARED by the Trustee that:

- 1. A fund (“the Fund”) shall be established to be held by the Trustee upon the trusts of this Deed and to be administered by the Trustee in accordance with the provisions of this Deed.
- 2. The Fund shall be known as AUSTRALIAN GOVERNMENT EMPLOYEES SUPERANNUATION TRUST.
- 3. The Fund shall be deemed to have come into operation on the 1st day of July 1990 (“the Commencement Date”).
- 4. The Schedules annexed to this Deed shall comprise part of and shall be read and construed as part of this Deed.
- 5. The Trustee covenants to be bound by the provisions of this Deed as Trustee (within the meaning of this Deed).

IN WITNESS WHEREOF this Deed has been duly executed on the day and year first hereinbefore written.

THE COMMON SEAL of **ABTOURK**)
(VIC No. 20) PTY LTD was hereunto)
affixed in accordance with its Articles of)
Association in the presence of:)

.....Director

.....Director / Secretary

SCHEDULE

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the contrary intention appears:

- (a) a reference to a rule, clause or schedule or a provision thereof shall be read as a reference to that rule, clause or schedule or provision as amended from time to time;
- (b) a reference to a statute or a provision thereof shall be read as if the words "or any amendment or re-enactment thereof or provisions substituted therefore" were added thereto;
- (c) references to contributions and liability to contribute shall be read as references to contributions (if any) and liability (if any) to contribute;
- (d) each gender includes each other gender and the singular number includes the plural and vice versa;
- (e) headings are inserted for ease of reference only and do not form part of the Deed and shall not affect the construction hereof;
- (f) whilst for convenience particular words or groups of words defined in clause 1.2 commence with capital or lower case letters, failure to use capital or lower case letters in those words or groups of words elsewhere in the Deed does not of itself mean that those words or groups of words bear meanings different from the meanings assigned to them respectively in clause 1.2; and
- (g) a reference to:
 - (i) a rule is a reference to a provision in a Division; and
 - (ii) a clause is a reference to a provision in this Schedule.

1.2 In this Deed, unless the contrary intention appears:

"A Class Director" means a director appointed by the holder of the A Class Share, who shall be the Independent Director, and shall not in any capacity be a representative of the Employers, the Members, the ACTU or the Minister for Finance.

"A Class Share" means a share held by a nominee of both the Minister for Finance and the ACTU jointly and not severally.

"Account" means one or more of the Accounts established pursuant to the Deed.

"ACTU" means the Australian Council of Trade Unions.

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"Approved Benefit Arrangement" means a fund or benefit arrangement, other than the Fund, including without limitation another superannuation fund, an approved deposit fund, an eligible rollover fund, a Successor Fund and a deferred annuity to which a payment may be made from the Fund, or from which a payment may be accepted into the Fund, without causing the Fund to be in breach of or to fail to comply with any applicable requirement under the Relevant Requirements.

"Auditor" means a person or persons eligible to act as an auditor in accordance with the Relevant Requirements or a firm of such persons appointed by the Trustee pursuant to clause 7.4.

"B Class Director" means a director appointed by the holders of the B Class shares.

"B Class Share" means a share held by a nominee of the Minister for Finance.

"beneficiary" means a person who is presently or contingently entitled or becomes so entitled to a benefit under the Fund.

"Binding Nomination" means a nomination accepted by the Trustee which:

- (a) has been given to the Trustee by the Member;
- (b) requires the Trustee to pay the Death Benefit of a Member in the event of the Member's death to the estate of the Member or to a nominated person (where the nominated person must be a dependant or legal personal representative of the Member or such other person as permitted by the Relevant Requirements); and
- (c) complies with the Relevant Requirements and any other condition as specified by the Trustee from time to time.

"C Class Director" means a director appointed by the holders of the C Class shares.

"C Class Share" means a share held by a nominee of the ACTU.

"child", in relation to a Member and subject to Relevant Requirements, includes:

- (a) an adopted child, a step-child, an ex-nuptial child, a foster child or a ward either of a Member or of a spouse of a Member or a person in respect of whom, in the opinion of the Trustee, a Member or a spouse of a Member stands in loco parentis; and
- (b) if, at any time, the Member was in a relationship as a couple with another person (whether the persons are the same sex or different sexes) – a child who is the product of the Member's relationship with that other person.

"Commencement Date" means 1 July 1990.

"Constitutional Corporation" means a body corporate that is:

- (a) a trading corporation; or
- (b) a financial corporation,

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formed within the limits of the Commonwealth and within the meaning of paragraph 51(xx) of the Australian Constitution.

"Death Benefit" means, in relation to a Member who dies, the death benefit determined in accordance with this Deed.

"Deed" means this Deed, including this Schedule and the Divisions, as amended from time to time.

"dependant", in relation to a Member or former Member, means:

- (a) a spouse of the Member or former Member, or
- (b) a child of the Member or former Member, or
- (c) any person, whether or not related to the Member or former Member by blood or marriage, who, in the opinion of the Trustee, is or was at least partially dependent on the Member or former Member at the time of the Member's death or of any other event in respect of which an entitlement to a benefit may arise.

"Designated Employer" has the meaning given in the PB Act.

"Division" means, as the context requires, one or more of the Accumulation Division, the Allocated Pension Division and any other Division established in accordance with clause 4.6.

"Eligible Person" means any person who the Trustee determines is eligible to become a Member pursuant to this Deed and the Relevant Requirements.

"Employee" means a person engaged in gainful employment with an Employer and includes persons covered by rule 2.5 of Division One, an executive or non-executive director of a body corporate and any other person who is deemed to be an employee of the Employer for the purposes of the SG Act.

"Employer" means a Public Sector Employer and any other person admitted by the Trustee as an Employer, and in relation to any particular Member means the Employer by which he or she is for the time being engaged.

"Employer Sponsored Member" means a person who has joined the Fund either:

- (a) under rule 2.2 of Division One; or
- (b) under any other provision in the Deed and has subsequently received Employer contributions in the Fund.

"equitable share" means an amount equitably determined by the Trustee, and "amount equitably determined" has a corresponding meaning.

"Fund" means the superannuation fund called Australian Government Employees Superannuation Trust established under this Deed.

"Fund Crediting Rate" means a rate determined pursuant to clause 8.3.

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"gainful employment" has the same meaning as in the Regulations made under the SIS Act.

"group life insurance" includes insurance described in a policy as group life insurance and any other temporary insurance provided under a policy.

"Independent Director" has the same meaning as in the SIS Act.

"Insurance Company" means such insurer, insurers or re-insurance companies as the Trustee may from time to time determine.

"law" means any statute or regulation of the Commonwealth of Australia or of any State or Territory of Australia.

"Member" means a person admitted as a member under this Deed and who has not ceased to be a Member.

"Member Account", in relation to a Member or former Member other than a Pension Member or former Pension Member, shall contain an amount equal to the sum of:

- (a) contributions or Shortfall Components made by or in respect of the Member pursuant to this Deed;
- (b) any amount received and applied by the Trustee in respect of the Member pursuant to clause 8 or clause 16;
- (c) any other amount held or applied for the benefit of the Member pursuant to this Deed;
- (d) interest thereon at the Fund Crediting Rate (if positive); and
- (e) such other amounts as the Trustee shall determine from time to time or as received in accordance with the Relevant Requirements,

less the sum of:

- (f) the amount of such provision (if any) as the Trustee may make for the payment of:
 - (i) such tax, duty, surcharge or other impost in relation to the income of the Fund or the receipt of contributions, deemed contributions or transfers to the Fund for a Member or in relation to any payment from the Fund to or with regard to a Member or a benefit of a Member; and
 - (ii) administration or other expenses;
- (g) the premiums or cost of any insurance provided in respect of a Member under a policy;
- (h) that part of any benefit paid to or in respect of the Member and not provided by group life insurance;
- (i) interest thereon at the Fund Crediting Rate (if negative); and
- (j) any other amount reasonably determined by the Trustee having regard to the provisions of the Deed or the Relevant Requirements;

and in relation to a Pension Member or former Pension Member, "Member Account" means the Pension Account of the Member.

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"Minister for Finance" means the Minister for Finance and Administration in the Australian Government or, if such position ceases to exist, such other member of the Australian Government who holds portfolio responsibility for Australian Public Sector superannuation matters.

"Participating Employer" has the same meaning as Employer.

"PB Act" means the *Superannuation (Productivity Benefit) Act 1988*.

"Pension Account" means the account established in respect of a Pensioner in accordance with Division Two.

"Pension Member" means a member that has elected to receive an allocated pension as set out in Division Two.

"person" and words importing a natural person include a body corporate and a partnership or any other group of persons.

"policy" means a term, group life insurance or other policy or contract of insurance referred to in clause 6.1.

"power" means a power, right, discretion or authority of whatsoever nature and, wherever a power is conferred on the Trustee, an Employer, a delegate of the Trustee or any other person or persons, the relevant provision of the Deed shall be read as if the words "at any time or from time to time" were added thereto.

"Public Offer Member" means a person who has joined the Fund under rule 2.4 of Division One and has not received Employer contributions in the Fund.

"Public Sector Employer" means a department, authority, agency or other body howsoever described:

- (a) whether established as a company or body corporate or otherwise; and
 - (b) to which any of the following apply:
 - (i) the body was established by, or incorporated by or in accordance with, an Act, regulations made under an Act or a law of the Commonwealth, the Northern Territory or the Australian Capital Territory;
 - (ii) the body is financed in whole or substantial part, either directly or indirectly, by moneys provided by the Commonwealth, the Northern Territory or Australian Capital Territory;
 - (iii) for a company or a body corporate:
 - A. the Commonwealth, the Northern Territory or Australian Capital Territory (whether solely or together with another Public Sector Employer to which (i) or (ii) above applies); or
 - B. two or more Public Sector Employers to which (i) or (ii) above applies
- has a controlling interest in the company or the body corporate.

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"Relevant Requirements" means any standard, covenant or other requirement under the SIS Act, the PB Act or any other law, or of a Responsible Authority:

- (a) imposed on the Trustee; or
- (b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds; or
- (c) which the Trustee or the Fund must satisfy to avoid any penalty, detriment or disadvantage which is or may become payable in connection with the Fund or anything done or to be done under the Deed,

and includes any proposed requirements which the Trustee believes will have retrospective effect. However, if such a standard, covenant or other requirement ceases to be in force or the Responsible Authority does not require it to be complied with either generally or in relation to the Fund, then that standard, covenant or requirement ceases to be a Relevant Requirement to that extent.

"Remainder Employee" has the meaning ascribed in the PB Act.

"Reserve Account" means the Account referred to in clause 8.

"Responsible Authority" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office, the Australian Transaction Reports and Analysis Centre (AUSTRAC) or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

"SG Act" means the *Superannuation Guarantee (Administration) Act 1992*.

"Shortfall Component" has the same meaning as in the SG Act.

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

"spouse", in relation to a Member, means a person who, in the opinion of the Trustee, is (or, in the case of a deceased Member, was at the date of death of the Member):

- (a) legally married to the Member; or
- (b) ordinarily living with the Member (although not legally married to the Member) on a permanent, genuine and bona fide domestic basis in a relationship as a couple (whether the persons are the same sex or different sexes).

"Spouse Member" means a person who has joined the Fund under rule 2.3 of Division One and has not received Employer contributions in the Fund.

"Successor Fund" has the same meaning as in the Relevant Requirements.

"Tax" includes all:

- (a) actual or anticipated stamp, financial institutions, registration and other duties;
- (b) bank accounts debits tax and other taxes, levies, imposts, deductions, surcharges and charges;

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- (c) interest, fines and penalties (if any) associated with payment or failure to pay amounts referred to in paragraphs (a) or (b); and
- (d) any charges, fees or other amounts payable in respect of any amounts referred to in paragraphs (a) to (c) (inclusive),

and shall also include any instalment or part payment of any amounts referred to in paragraphs (a) to (d) (inclusive) of this definition.

"Tax Act" means the *Income Tax Assessment Acts 1936 and 1997*.

"Total and Permanent Disablement" means disablement of a Member resulting from an illness accident or injury which commenced or occurred while he or she was employed by an Employer and was a Member and as a result of which:

- (a) the Member has suffered the loss of use of two limbs or the sight of both eyes or the loss of use of one limb and the sight of one eye (where limb is defined as the whole hand or the whole foot); or
- (b) the Member has been absent from employment with their Employer for six consecutive months and has provided proof to the satisfaction of the Insurance Company that the Member has been incapacitated to such an extent as to result in the Member being unlikely ever to be employed in a capacity for which the Member is reasonably qualified by virtue of the Member's education, training or experience; or
- (c) the Trustee in its discretion decides that the Member has been so disabled as to be entitled to a Total and Permanent Disablement benefit in respect of such disablement.

However, where there is a policy of group life insurance underwriting a relevant benefit, Total and Permanent Disablement has the same meaning as Total and Permanent Disablement as defined in such policy of group life insurance while it is in force.

- 1.3 A reference in the Deed to the provision being subject to a particular standard is a reference to requirements of the relative standard applicable to the operation of superannuation funds which has been prescribed by the Relevant Requirements.
- 1.4 Any obligation imposed on an Employer whilst contributing to the Fund or a Member whilst a Member of the Fund and which has not been fully complied with at the date upon which the Employer ceases to be a contributor to the Fund or the Member ceases to be a Member shall continue to be binding on such Employer or Member until complied with.
- 1.5
 - (a) Any provision of this Deed which is void, prohibited or unenforceable in a jurisdiction (whether by reason of the Relevant Requirements or otherwise) is ineffective in that jurisdiction to the extent only that the provision is void, prohibited or unenforceable in that jurisdiction.
 - (b) Any provision which is ineffective under paragraph (a) above shall not invalidate the remaining provisions of this Deed.
 - (c) Subject to the Relevant Requirements:

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- (i) where a provision is ineffective under paragraph (a) above, the Trustee shall determine the effect and interpretation of the remaining provisions of this Deed; and
- (ii) the Trustee's determination shall be final, conclusive and binding on all interested persons.

2. ADMINISTRATION

- 2.1 The Trustee and a delegate of the Trustee under clause 2.2 has, in the exercise or non-exercise or partial exercise of each power exercisable by that Trustee, or that delegate, as the case may be, an absolute and uncontrolled discretion and is not bound subject to the Relevant Requirements to give to any person any reason for or explanation of its exercise, non-exercise or partial exercise of any such power PROVIDED THAT a delegate of the Trustee may be required by the Trustee to provide reasons for or explanations of the exercise, non-exercise or partial exercise of any such power.
- 2.2 Subject to the Relevant Requirements, the Trustee has the complete management and control of all proceedings, matters and things in connection with the Fund and may delegate any power (including a power which the Trustee has a duty to exercise) exercisable by the Trustee to any person upon such terms and conditions, including without limitation, the grant of indemnities by the Trustee, as the Trustee thinks fit. The Trustee may revoke any such delegation and may exercise any such power itself concurrently with or to the permanent or temporary exclusion of a delegate.
- 2.3 A Member of the Fund may be a Member of a board of any corporate Trustee or a delegate of the Trustee under clause 2.2 and may exercise any power vested in the Member in that position without prejudice to his or her rights as a Member of the Fund.
- 2.4 The Trustee may, by resolution, appoint any one or more persons to sign or execute such contracts, deeds or documents including cheques, notices, appointments, concurrences and certificates as the Trustee may authorise to be so signed. Contracts, deeds or documents so signed shall be binding on the Trustee and the Trustee shall be deemed to have been signed or executed those documents, deeds or other documents, pursuant to such resolution.
- 2.5 If a provision of the Deed would otherwise be void because it:
- (a) subjects the Trustee to direction by another person; or
 - (b) permits a person to exercise a discretion without the consent of the Trustee,
- then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

3. TRUSTEE

- 3.1 The Trustee shall be a Constitutional Corporation and shall hold such licences as are required under the Relevant Requirements.
- 3.2 The Trustee ceases to be the Trustee when:
- (a) the Trustee retires after appointing its replacement; or

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- (b) required under the Relevant Requirements.
- 3.3 The appointment or retirement of a Trustee shall comply with the Relevant Requirements.
- 3.4 A retiring Trustee shall transfer all assets to the new Trustee or its nominee.
- 3.5 Subject to the Deed and the Relevant Requirements, the following provisions shall apply to the Trustee:
- (a) the board of directors of the Trustee shall comprise equal numbers of persons appointed or elected to represent the Employers and the Members and the additional Independent Director and that board of directors in making decisions in relation to the Fund shall comply with the Relevant Requirements relating to decisions by trustees;
 - (b) it may act through its board of directors or otherwise as authorised by its Constitution;
 - (c) whenever a vacancy occurs amongst the board of directors of the Trustee, such vacancy shall be filled within ninety (90) days as follows:
 - (i) the A Class Director - by a person nominated by the holder of the A Class Share;
 - (ii) the B Class Directors - by a person nominated by the holders of the B Class Shares; and
 - (iii) the C Class Directors - by a person nominated by the holders of the C Class Shares.
- 3.6 The Trustee, and any director of the Trustee, will be entitled to remuneration from the Fund in respect of its services as a Trustee or director of such amount as is reasonably determined by the Trustee from time to time.
- 4. THE FUND**
- 4.1 The Fund comprises all moneys, policies and other assets and investments held by the Trustee in accordance with the Deed.
- 4.2 The Trustee shall appoint as officers or servants of the Fund such persons as the Trustee shall from time to time require to assist in administering the Fund including a director of the Trustee and shall have the power to pay any remuneration and expenses from the Fund to such director officer or employee.
- 4.3 Notwithstanding clause 4.2, the Trustee may appoint any person or company to administer the Fund. The appointment shall be in writing.
- 4.4 The Trustee may act on the advice or opinion of any consultant, claims assessor, Insurance Company, barrister, solicitor, broker, accountant, medical practitioner or other professional person and, subject to the Relevant Requirements, the Trustee shall not be responsible for any loss occasioned by acting on this advice.
- 4.5 Subject to clause 4.6, the Fund comprises the following Divisions:
- (a) the Accumulation Division under the rules contained in Division One; and

(b) the Allocated Pension Division under the rules contained in Division Two.

4.6 The Trustee may from time to time establish and vary Divisions of the Fund 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.

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

4.8 The Trustee may either determine that the assets comprised in each Division shall only be applied for the purpose of that particular Division and shall not be available to meet any liabilities in respect of the other Divisions of the Fund, or the Trustee may determine to pool all the assets of the Fund so that all assets of each Division are available in respect of all of the liabilities of the Fund.

5. INVESTMENT

5.1 The Trustee shall invest in a manner which complies with the Relevant Requirements.

5.2 Subject to compliance with the Relevant Requirements, all moneys received by the Trustee but not required to meet current payments may in the absolute discretion of the Trustee be invested or applied as a common fund within or outside Australia in any manner in which the Trustee could invest or apply the moneys if it were acting personally and not in a fiduciary capacity but with the sole and beneficial ownership of the money and assets of the Fund, including but not limited to the following:

- (a) in any investment and in any manner authorised by the laws of the Commonwealth of Australia or of any of its States or Territories for the investment of trust moneys ; or
- (b) on deposit with any trading or savings bank in Australia or with any dealer authorised or approved by the Reserve Bank of Australia to operate in the official short term money market, or with any company; or
- (c) in shares, stocks, notes, options, debentures or other securities; or
- (d) in the units, sub-units or other fractional interests howsoever called and whether divided or undivided in or of any unit trust or other fund in the nature of a unit trust; or
- (e) in or upon policies of insurance on the life of any person; or
- (f) in making, drawing, accepting, endorsing, discounting and issuing promissory notes bills of exchange and other negotiable or transferable instruments without any qualification as to bank acceptance or otherwise; or
- (g) in the acquisition or upon the security of real estate; or
- (h) in the acquisition of options to purchase or other limited interests in any real or personal property; or
- (i) in hedging contracts, futures contracts and other financial instruments of any type, including, but not limited to, share price index futures contracts or options on such contracts, currency futures contracts or options on such contracts, spot and forward

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foreign exchange agreements, swap agreements relating to income streams from physical or derivative instruments including interest rate or currency swaps,

with full power to sell, dispose of, lease, vary or replace, encumber, grant options to purchase in respect of and otherwise deal with such investments as fully and effectively and with the same unrestricted powers in all respects as a person absolutely and beneficially entitled dealing with his own property may do.

- 5.3 To the extent permitted by the Relevant Requirements, the Trustee:
- (a) may mix investments with investments of other people or trusts as if it were dealing with its own property;
 - (b) may make a loan or give financial assistance to a person; and
 - (c) may borrow or raise money up to any amount and may secure payment or repayment in a manner which it thinks fit.
- 5.4 The Trustee may underwrite or sub-underwrite or join with others in underwriting or sub-underwriting the subscription of any of the authorised investments hereunder and may in exercise of the Trustee's powers of delegation under clause 2.2 give to any investment manager appointed under clause 5.5 general authority to enter into and carry out underwriting or sub-underwriting agreements and the like whether for the Fund alone or for the Fund in conjunction with other funds and institutions.
- 5.5 The Trustee shall have power to appoint from time to time such one or more corporations as the Trustee may think fit to act either as custodian trustee or custodian trustees or investment manager or investment managers or both subject to such conditions, including without limitation, the grant of indemnities by the Trustee, as the Trustee may from time to time determine. The Trustee may delegate to and confer upon each such custodian trustee or investment manager such authorities powers and discretions as the Trustee may think fit. Subject to clause 19.2, the Trustee shall not be liable or responsible for any act, omission, error of judgment, negligence or breach of trust of any custodian trustee or investment manager and shall not be bound to take proceedings against any custodian trustee or investment manager in respect thereof. The Trustee shall also have power to pay out of the Fund to any such custodian trustee or investment manager such remuneration for its services as the Trustee considers proper or to permit such amounts being amounts to be deducted by the investment manager from investment earnings. The Trustee shall also have power to remove from time to time any such custodian trustee or investment manager. Any appointment under this clause shall comply with the Relevant Requirements.
- 5.6 The powers of investment set out in this clause 5 shall be exercised and carried out either by the Trustee or by one or more of the custodian trustees or investment managers or partly by one and partly by the other or others and shall be of such methods of investment as the Trustee may from time to time determine.
- 5.7 Without limiting in any way the obligations and powers vested in the Trustee pursuant to preceding provisions of this clause 5:
- (a) the Trustee may:
 - (i) establish any number of investment strategies;

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- (ii) nominate the assets which will be subject to each particular investment strategy;
 - (iii) offer Members the opportunity of having amounts held in their Member Account invested in accordance with a particular investment strategy; and
 - (iv) make rules on when and how Members may give the Trustee directions in this respect;
- (b) where a Member is provided with an opportunity to have the amount held in their Member Account invested pursuant to a particular investment strategy or strategies, the Trustee must provide to the Member such information as is required in respect of the investment strategy or strategies by the Relevant Requirements; and
- (c) where a Member is provided with an opportunity to have the amount held in their Member Account invested pursuant to a particular investment strategy or strategies and either fails or is unwilling to nominate a particular investment strategy, the Trustee reserves the right to invest the amount held in the Member's Member Account in such manner as it in its absolute discretion shall deem appropriate.

6. INSURANCE

- 6.1 The Trustee shall have power to effect or take out at the expense of the Fund from time to time one or more term, group life insurance or other policies or contracts with one or more Insurance Companies and to continue or renew or arrange for the continuance or renewal of all or any of such policies or contracts for such period or periods as the Trustee may think fit. The Trustee may also agree from time to time with the Insurance Company concerned for any policy or contract to be varied or modified. In addition to a reduced benefit or in substitution for a full benefit payable under any such policy or contract of insurance, the Trustee may pay a benefit in respect of death or Total and Permanent Disablement under rules 6(c) or 7(c) of Division One in place of such an insured benefit.
- 6.2 A policy shall be on such terms and conditions as may be approved by the Trustee and the Trustee shall pay all premiums from the Fund.
- 6.3 If at any time:
- (a) the Trustee is of the opinion that it is not reasonably practicable to obtain life insurance or an increase in life insurance or to maintain life insurance in respect of a Member under a policy; or
 - (b) pursuant to the policy, the Insurance Company for any reason whatsoever fails to provide or increase, or reduces terminates or withholds, life insurance in respect of a Member or refuses to admit a claim for the whole or part of the life insurance effected in respect of a Member,

the insurance component (if any) of any benefit payable to or in respect of the Member pursuant to the Deed may be reduced to the extent that life insurance is not obtained, increased or maintained or is not provided or increased or is reduced or terminated or that the claim is not admitted in respect of the Member, as the case may be, or, where life insurance is withheld, shall be adjusted accordingly.

7. ACCOUNTS AND AUDIT

- 7.1 The Trustee shall cause proper books of record and account to be kept showing all dealings with the assets of the Fund. The Trustee shall maintain the accounting records in such manner as will enable the preparation of financial statements.
- 7.2 The Trustee shall keep records for the Fund:
- (a) of the matters; and
 - (b) for the period; and
 - (c) in the manner,
- prescribed by the Relevant Requirements.
- 7.3 For each financial year, the Trustee shall prepare financial statements for the Fund which comply with the Relevant Requirements.
- 7.4 The Trustee shall appoint an Auditor or Auditors to provide audit services in relation to the Fund.
- 7.5 The Trustee shall ensure that, for each financial year, the Auditor:
- (a) audits the accounts and records of the Fund; and
 - (b) reports in writing to the Trustee,
- within the time specified by the Relevant Requirements.
- 7.6 Without limiting the generality of clause 7.1, the Trustee shall, in accordance with the Relevant Requirements in relation to the keeping and retention of records:
- (a) cause to be kept such records and accounts as it considers necessary to ascertain the balance in the Member Account of each Member and any benefit which becomes payable to or in respect of the Member pursuant to the Deed; and
 - (b) retain those records or any relevant part thereof for at least such period of time as may be required in respect of the keeping of those records in accordance with the Relevant Requirements.
- 7.7 The Auditor appointed by the Trustee shall have access at all reasonable times to all the books and records under the control of the Trustee which the Auditor considers necessary or expedient to inspect for the purpose of auditing the Fund's accounts and including the expression of an opinion by the Auditor on those accounts.

8. RESERVE ACCOUNT

- 8.1 A Reserve Account shall be established by the Trustee in connection with the Fund and the Trustee may credit to such Account:
- (a) such portions of contributions made under this Deed as the Trustee may from time to time determine to be necessary to provide for payment of the administration expenses of the Fund;

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- (b) income arising from the investment of the Fund and the accumulations thereto;
 - (c) income arising from the investments of the Reserve Account and the accumulation thereto;
 - (d) any moneys receivable by the Trustee in trust for the Reserve Account pursuant to the Deed;
 - (e) any accretions to or profits on realisation of investments in the Reserve Account;
 - (f) any other moneys assets or investments which are payable to the Reserve Account or become subject to the trusts thereof; and
 - (g) any moneys not required for the payment of benefits in accordance with the Deed,
- and the Trustee shall debit any loss realised and arising from the sale of investments in the Reserve Account and shall also debit to the Reserve Account any amounts paid from the said Account pursuant to clauses 8.2, 8.3 and 8.4.

8.2 The Reserve Account may be used for any one or more of the following purposes:

- (a) payment of administration, insurance and other expenses of the Fund;
- (b) payment of interest to the Member Accounts;
- (c) to augment the retirement benefits of all Members in proportion to their respective interests in the Fund;
- (d) to provide additional individual benefits other than retirement benefits for all Members on an equitable basis; and
- (e) to smooth interest credited to Member Accounts in accordance with any reserving policy determined by the Trustee from time to time.

8.3 The Trustee may for any purpose (including but not limited to crediting, debiting or altering a Member Account or calculating benefits) determine a rate or rates ("**Fund Crediting Rate**") from time to time in relation to actual or prospective earnings (positive or negative) having regard to the actual and anticipated earnings and outgoings of the Fund and such other matters as the Trustee considers relevant over any period. The Trustee may determine a Fund Crediting Rate on a prospective interim basis in respect of a particular period, and may subsequently determine a Fund Crediting Rate on a retrospective basis, in respect of a Member Account for that period.

8.4 Subject to the Relevant Requirements, the Trustee, upon a payment of any money to be credited to the Reserve Account representing a benefit in respect of which the right to receive the same has ceased pursuant to the Deed, shall within the year of income during which such amount is received or six months thereafter or within such further period as may be allowed under the Relevant Requirements, credit such amount to the Members or retired members or to the dependants of a deceased Member or a deceased ex-Member of the Fund in such proportions as the Trustee at its absolute discretion shall determine PROVIDED THAT the Trustee may retain such portion of the amount so received as may be allowed under the Relevant Requirements to form an unallocated amount within the Reserve Account to be applied for any one or more of the purposes set out in clause 8.2 as the Trustee at its discretion shall determine.

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8.5 The Trustee shall only allocate a benefit to the credit of a Member if such allocation is made in compliance with the Relevant Requirements.

8.6 The Trustee may, in its absolute discretion and in substitution for determining a Fund Crediting Rate, determine that the earnings (investment or otherwise) in relation to some or all Member Accounts shall be accounted for using a unitised method of member record accounting (where changes in the value of an investment are reflected in a change in the unit price of the relevant investment) instead of a crediting rate basis. Where a unitised method of member record accounting is adopted by the Trustee in relation to some or all Member Accounts, all references to Fund Crediting Rate contained in this Deed shall be a reference to the unitised method as set out above.

9. RECEIPTS

The receipt of the Trustee or an authorised delegate or officer of the Trustee is a sufficient discharge to any person for money paid or other property transferred to the Fund.

10. BENEFITS

10.1 Subject to the Deed, the benefits of the Fund shall, subject to the Relevant Requirements, be as specified in or determined in accordance with the Divisions and only become payable on the happening of the events prescribed therein and after application by the person claiming such benefit made in such form (along with such personal identification documents as prescribed by the Trustee) and within such period as the Trustee may prescribe either generally or in a particular case. Any decision of the Trustee as to whether a benefit is payable and regarding the amount and application of any benefit is final and conclusive against all persons.

10.2 Every person in receipt of or claiming a benefit from the Fund shall produce to the Trustee such information and evidence as the Trustee may require in order to satisfy itself that the benefit is properly payable in accordance with the Deed, and the Trustee may withhold or suspend payment of that benefit or refuse to consider any claim hereunder until such time as that person provides such information and evidence to its satisfaction.

10.3 In the event that there are any Taxes, management, administration and other expenses attributable to a particular benefit, the Trustee may, if it considers it appropriate so to do and subject to the Relevant Requirements in relation to the vesting in Members of benefits arising directly or indirectly from amounts contributed to superannuation funds, deduct the amount of such Taxes, management, administration and other expenses from such benefit and pay only the residual amount of that benefit.

10.4 If in the Trustee's opinion, in order to comply with the Relevant Requirements in relation to the preservation and portability of benefits, all or any portion of a benefit is required to be preserved until the Member attains a particular age or until the occurrence of a particular event or circumstance in relation to the Member, that benefit or the portion thereof shall be preserved as required by the Relevant Requirements.

10.5 The Trustee shall not pay a benefit if the payment results in the Trustee or an Employer contravening any law.

- 10.6 The Trustee shall comply with the Relevant Requirements in relation to the splitting, flagging and payment of benefits relating to family law arrangements (“**family law arrangements**”), and if the Relevant Requirements allow, may permit the former spouse of a Member to become a Member when the benefit or Member Account of the Member is split in accordance with family law arrangements.
- 10.7 Subject to the Relevant Requirements, the Trustee may allow a Member to transfer or allot some or all of the contributions received for the Member in the Fund during a year to their spouse’s superannuation account in the Fund or in another fund (“**contributions splitting**”) and the Trustee shall provide such information to all relevant parties as required under the Relevant Requirements.
- 10.8 If the Trustee believes that the payment of a Member's benefit is or will contravene any law, the Trustee may:
- (a) where applicable, reduce the contributions payable in respect of the Member;
 - (b) transfer an amount from the Member Account to the Reserve Account if the Relevant Requirements permit;
 - (c) withhold payment of the Member’s benefit until such time as payment is allowed by the relevant Responsible Authority; or
 - (d) apply a combination of (a), (b) and (c),
- as it considers appropriate.
- 10.9 Subject to this Deed, a person ceases to be a Member upon:
- (a) the payment of all benefits to which the Member is entitled under this Deed;
 - (b) a total transfer of the Member's benefits to an Approved Benefit Arrangement; or
 - (c) the Member's entitlement to benefits being terminated,
- whichever first occurs.

11. PAYMENT OF DEATH BENEFIT

- 11.1 Subject to this Deed, the Trustee shall hold a Member's Death Benefit UPON TRUST to pay the same in accordance with the Binding Nomination or in the event there is no Binding Nomination to such one or more of the following persons to the exclusion of the other or others and in such manner and proportions as the Trustee determines, namely:
- (a) to the Member's dependants PROVIDED THAT the Trustee may take particular cognisance of any particular dependant nominated by the deceased Member;
 - (b) to the estate or legal personal representative of the deceased Member; and
 - (c) to any other person to whom payment of the benefit is permitted under the Relevant Requirements,

and the receipt of such person or persons shall be a complete discharge to the Trustee in respect of any money paid to him, her, it or them and the Trustee shall not be bound to see to its application.

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- 11.2 Any nomination by a Member under clause 11.1(a) shall be made in writing other than by will and be in such form as the Trustee may from time to time accept. The Trustee shall be entitled but in no way obliged to act in respect of such a nomination unless the nomination is made as a Binding Nomination.
- 11.3 Any property so paid or transferred to the legal personal representatives of a deceased Member shall not be part of the deceased Member's estate or be liable for the deceased Member's liabilities or the liabilities of the deceased Member's estate.
- 11.4 Where:
- (a) the Trustee is unable to identify and locate a dependant of a deceased Member;
 - (b) neither Probate nor Letters of Administration in respect of a deceased Member are produced or, where same has or have been produced, the legal personal representatives are unwilling or unable to act as trustees of such a trust; and
 - (c) the Trustee is unable to identify and locate a person under clause 11.1(c),
- the said Death Benefit shall be utilised in accordance with the Relevant Requirements.

12. MINORS AND INFIRM PERSONS

- 12.1 In this clause 12, "**infirm person**" means a beneficiary suffering from a physical or mental condition or lack of capacity to handle his or her own affairs or any other beneficiary if the Trustee considers, for any reason whatsoever, that it is in his or her interests that this clause 12 should apply.
- 12.2 In the case of an infirm person, the Trustee is not under any duty to have recourse to clause 12.3, or to consider whether recourse should be had thereto, notwithstanding that the Trustee may have actual notice of any such infirmity or other reason.
- 12.3 The Trustee may apply the benefit to which a beneficiary who is a minor or infirm person is entitled or any part of that benefit towards the maintenance, education or advancement or otherwise for the benefit of the beneficiary and for that purpose may pay any moneys or transfer any property to any person who, in its opinion, is a trustee for, or has the care, custody or control for the time being of, the beneficiary and at such times and in such amounts as it determines. The receipt of such a person is a sufficient discharge to the Trustee and the Trustee is not bound to see to the application thereof.
- 12.4 Where only part of the benefit to which a beneficiary is entitled is applied pursuant to clause 12.3, the Trustee shall invest the remainder of the benefit in accordance with clause 5.1 and shall treat the income therefrom as an accrual to the benefit to which the beneficiary is entitled.

13. FORFEITURE OF BENEFITS

- 13.1 Subject to the Relevant Requirements, if the Trustee is satisfied that a Member, former Member or any other person to whom a benefit is or may be payable under the Deed has:
- (a) assigned, charged or attempted to assign or charge his or her interest or benefit in the Fund; or

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- (b) done or suffered to be done any act or the happening of any event whereby he or she might be deprived of the personal enjoyment thereof,

then that interest or benefit shall (subject to the requirements of the *Bankruptcy Act 1966*) be immediately forfeited to the Fund and applied in accordance with the provisions of clause 13.2.

- 13.2 The Trustee shall, at its discretion, apply the interest or benefit forfeited pursuant to clause 13.1 to or for the benefit of:

- (a) the Member, former Member or other person who but for clause 13.1 would have received the benefit; or
- (b) any one or more of the Member, former Member or any dependant of the Member or former Member and in such amounts and proportions as the Trustee may determine.

- 13.3 Where by virtue of any of the provisions of this Deed the whole or any part of the interest of a Member in the Fund or of a benefit secured in respect of a Member or former Member is forfeited to the Fund or any money or other property remains in the hands of the Trustee after all benefits have been provided, the Trustee shall apply the same to the Reserve Account.

14. RETENTION OF BENEFITS

- 14.1 Subject to the Relevant Requirements, where an incapacitated beneficiary ("**incapacitated beneficiary**") becomes, or is in the opinion of the Trustee suffering intellectual impairment, mental illness, brain damage or senility or incapable for any reason whatsoever of managing his or her own affairs, his or her interest in the Fund shall be retained in the Fund and applied in accordance with clause 14.2 at the discretion of the Trustee and neither that incapacitated beneficiary nor any person claiming under or through the incapacitated beneficiary shall have any further claim or right in respect thereof other than under clause 14.2.

- 14.2 The Trustee may, subject to the Relevant Requirements, apply all or part of the interest or benefit retained in the Fund under clause 14.1 for the benefit of the former Member and his or her dependants or such one or more of the former Member and his or her dependants to the exclusion of the other or others and in such manner and proportions as the Trustee at its discretion determines. The interest or benefit may remain in the Fund and be applied at the Trustee's discretion, and if so it shall be applied by the Trustee within any period prescribed by the Relevant Requirements. The receipt of a guardian, administrator or attorney under a power of attorney for an incapacitated beneficiary shall be a sufficient discharge to the Trustee.

- 14.3 Subject to the Relevant Requirements, if the Trustee is satisfied that a Member or former Member has been guilty of fraud, dishonesty or misconduct causing or likely to cause loss, expense or detriment to an Employer, the Trustee or the Fund, the Trustee may determine that the person shall cease to be a Member and his or her Members' Interest shall be determined in accordance with clause 14.4 and applied by the Trustee in accordance with clause 14.5. The decision of the Trustee as to whether this clause applies is final and binding on all persons.

- 14.4 For the purposes of clause 14.3, the Member's Interest will be the amount that would otherwise have been determined as the amount payable in respect of the Member less any

amount that the Trustee determines to be necessary to make restitution to the Employer, itself or the Fund.

14.5 Subject to the Relevant Requirements, the Trustee shall, subject as provided in clause 14.4, apply the lesser of:

- (a) the total of the former Member's contributions to the Fund (if any); and
- (b) the value of the Member's Interest, determined in accordance with clause 14.4,

for the benefit of the former Member and his or her dependants or such one or more of the former Member and his or her dependants to the exclusion of the other or others and in such manner and proportions as the Trustee determines.

14.6 Any difference between the Member's Interest determined in accordance with clause 14.4 and the amount that would otherwise have been determined which is not applied in accordance with this clause may, subject to the Relevant Requirements and as appropriate:

- (a) be paid to the Employer;
- (b) be paid to the Trustee;
- (c) be retained in the Fund,

in order to make appropriate restitution.

15. UNCLAIMED BENEFITS

15.1 Where the Trustee is unable to locate a person to whom a benefit is payable from the Fund then, if the Relevant Requirements permit, the Trustee may pay all or part of that benefit to another Approved Benefit Arrangement without the consent of the person entitled to it.

15.2 The Trustee shall comply with the Relevant Requirements in relation to benefits which the Relevant Requirements:

- (a) treat as unclaimed money; or
- (b) require or allow to be transferred to an Approved Benefit Arrangement,

and shall take any other action which the Trustee considers appropriate.

16. TRANSFER FROM AN APPROVED BENEFIT ARRANGEMENT

Subject to the Deed and on such terms as the Trustee determines, the Trustee may receive from any Approved Benefit Arrangement, moneys in respect of a Member's interest in that Approved Benefit Arrangement or any amount as determined pursuant to clause 10.7 and shall apply the same to the Fund and for the purpose of providing benefits for or in respect of that Member on a basis determined by the Trustee. The moneys so received in respect of a Member shall be credited to the Member Account of the Member and the Trustee shall advise the Member in writing. Any arrangement under this clause shall comply with the Relevant Requirements.

17. TRANSFER TO AN APPROVED BENEFIT ARRANGEMENT

- 17.1 Subject to such conditions as the Trustee may impose, if a Member becomes a participant in an Approved Benefit Arrangement or where a person has ceased to be a Member and joins or is eligible to join any Approved Benefit Arrangement, the Trustee at the request of that person (or in accordance with the Relevant Requirements to a Successor Fund) may pay or transfer through the trustee or other person responsible for the Approved Benefit Arrangement the Member Account of the Member ("**Transferred Amount**") as determined by the Trustee. The Trustee may impose such conditions as it thinks fit and must comply with the Relevant Requirements in relation to the payment of a Transferred Amount.
- 17.2 A Member or former Member in respect of whom a Transferred Amount or Transferred Amounts is or are paid under this clause shall not be entitled to any other benefit from the Fund and the Trustee is discharged of all liability to and in respect of that Member or former Member in respect of such amount or amounts. Where a Member or former Member in respect of whom a Transferred Amount not representing all of the Member Account of the Member or former Member is paid under this clause, the Trustee is discharged of all liability to and in respect of that Member or former Member in respect of that part of the Member Account of the Member or former Member it represents and may reduce or otherwise adjust the balance of the Member Account of the Member or former Member to be provided for or in respect of the Member to such extent as it considers to be appropriate as a result of that transfer. The Trustee is not bound to inquire as to the application of any Transferred Amount.
- 17.3 In the case of a person who is presently entitled to a benefit but who has not made application to the Trustee for an immediate benefit from the Fund or if there remains payable from the Fund, after the Member has left the employ of the Employer, a benefit then in lieu of providing all or part of that benefit from the Fund:
- (a) the Trustee may with the consent of the Member pay or transfer to an Approved Benefit Arrangement an amount representing the value of the benefit determined by the Trustee; or
 - (b) in the absence of a consent from the beneficiary within ninety (90) days of the first date upon which consent could have been provided, the Trustee may, if the Relevant Requirements permit, or at such later time if required by the Relevant Requirements, pay or transfer to an Approved Benefit Arrangement an amount representing the value of the benefit determined by the Trustee. Such a person shall be deemed to have irrevocably appointed the Trustee as attorney for the purposes of securing participation in an Approved Benefit Arrangement and the Trustee may act in the name of the person for such purpose.

18. LIMITATION OF LIABILITY

- 18.1 None of the Trustee, a delegate of the Trustee under clause 2.2 or a director of the Trustee is liable for or in respect of any action, claim, counter-claim, set-off, demand, liability, cost or expense whatsoever arising from any act or omission in connection with the Fund or the Deed other than an act or omission involving the Trustee's fraud or wilful misconduct, wilful neglect or wilful default.
- 18.2 Despite the effect of clause 18.1, the Trustee remains liable for:

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- (a) a breach of trust where the Trustee has:
 - (i) failed to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (b) any monetary penalty imposed on the Trustee under a civil penalty order under the Relevant Requirements.

18.3 Despite the effect of clause 18.1, a director of the Trustee remains liable:

- (a) where the director has:
 - (i) failed to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the director was required to exercise; or
- (b) for any monetary penalty imposed on the director under a civil penalty order under the Relevant Requirements.

18.4 A reference to the Trustee, a delegate of the Trustee or a director of the Trustee in this clause 18 includes a reference to a former trustee of the Fund, a former delegate of the Trustee or former trustee and a former director of the Trustee or former trustee.

19. INDEMNITY

19.1 The Trustee, each director or officer of the Trustee and each of its delegates shall be indemnified out of the Fund and kept indemnified against any action, claim, counter-claim, set-off, demand, liability, cost or expense whatsoever arising from or in connection with the Fund.

19.2 Despite the effect of clause 19.1, the Trustee is not entitled to be indemnified out of the Fund for:

- (a) a breach of trust where the Trustee has:
 - (i) failed to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise;
- (b) any monetary penalty imposed on the Trustee under a civil penalty order under the Relevant Requirements.

19.3 Despite the effect of clause 19.1, a director of the Trustee is not entitled to be indemnified out of the Fund:

- (a) where the director has:
 - (i) failed to act honestly in a matter concerning the Fund; or

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- (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the director was required to exercise; or
 - (b) for any monetary penalty imposed on the director under the Relevant Requirements.
- 19.4 The Trustee, each director or officer of the Trustee and each of its delegates or representatives shall indemnify respectively the Fund and keep it indemnified against, any action, claim, counter-claim, set-off, demand, liability, cost or expense whatsoever arising from any act or omission involving the fraud or wilful misconduct, wilful neglect or wilful default of the Trustee, that director, that officer of the Trustee, that delegate of the Trustee or that representative of the Trustee, as the case may be.
- 19.5 A reference to the Trustee, a delegate or officer of the Trustee or a director of the Trustee in clauses 19.1, 19.2 and 19.3 includes a reference to a former trustee of the Fund, a former delegate or officer of the Trustee or former trustee and a former director of the Trustee or former trustee.
- 19.6 The Trustee may effect or acquire insurance in respect of any potential liability of the Trustee or a director or former director and shall pay from the Fund the premiums of such insurance.
- 20. NOTICES AND INFORMATION**
- 20.1 A notice given for the purpose of the Deed shall be deemed to have been validly given if it is given personally to the person to be served or if posted by prepaid ordinary mail addressed to the last known address of that person and, where so posted, shall be deemed to be given three (3) business days after the date of posting.
- 20.2 The Trustee shall give:
- (a) each Member;
 - (b) each Employer;
 - (c) the Responsible Authority;
 - (d) the trustee of any Approved Benefit Arrangement to which a benefit is transferred; and
 - (e) any other person,
- the information which is required to be given under the Relevant Requirements at a particular time.
- 20.3 Clause 20.2 is in addition to and not in derogation of the duty and powers of the Trustee to keep the Members informed.
- 20.4 No accidental failure or omission to give information as aforesaid shall affect the validity of any act or proceeding.

21. DISPUTE RESOLUTION

- 21.1 Subject to the Relevant Requirements, if any dispute or doubt whatsoever arises as to the interpretation of the Deed or as to the rights of a Member, the Employer or any other person hereunder, then (except to the extent provided in the Deed) the decision of the Trustee is final and conclusive against all persons, subject to any overriding powers of a court or tribunal of competent jurisdiction.
- 21.2 If the Relevant Requirements require, the Trustee shall take reasonable steps to ensure a procedure is in force under which:
- (a) any person entitled to a benefit in, or with an interest in a benefit from, the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
 - (b) enquiries or written complaints will be considered and dealt with within 90 days after they were made.

22. MISCELLANEOUS

- 22.1 Every person when making application to become a Member shall be entitled to be supplied with a copy of this Deed upon request.
- 22.2 Subject to the Relevant Requirements, an Employer may exercise any power or discretion given to it under the Deed in its own interest. It is not under any fiduciary obligation to any person in exercising that power or discretion.
- 22.3 Whenever it is necessary for the Trustee to decide questions of fact, whether for the purpose of clause 22 or otherwise, it may act upon such proofs or presumptions as it thinks fit whether they are legal proofs or presumptions or not.

23. AMENDMENT

- 23.1 Subject to this clause 23 and the Relevant Requirements in relation to the reduction of benefits, the Trustee may by supplemental deed or resolution amend, add to, revoke or replace all or any of the provisions of the Deed including the provisions of this clause (other than the provisions of clause 23.2) with effect from such date (whether before, on or after the date on which the supplemental deed is executed or the resolution is made) as may be specified in that deed or resolution. In the absence of express specification, the date of the execution of the deed or making of the resolution shall be deemed to be the date specified in that deed or resolution. Each such amendment, addition, revocation or replacement is binding on each Employer, each Member and any other person claiming under or bound by the Deed.
- 23.2 No amendment, addition, revocation or replacement shall be made which adversely affects a Member's right or claim to accrued benefits, or the amount of those accrued benefits, unless it is consistent with the Relevant Requirements.
- 23.3 Notwithstanding the provisions of clause 23.2, the Trustee may, subject where necessary to the consent in writing of the Responsible Authority, by supplemental deed or resolution amend, add to, revoke or replace all or any of the provisions of the Deed including this clause

with effect from such date (whether before, on or after the date on which the supplemental deed is executed or the making of such resolution) as may be specified in that deed or resolution in order to ensure that the Fund continues to satisfactorily comply with the Relevant Requirements. Each such amendment, addition, revocation or replacement is binding on each Employer, each Member or any other person claiming under or bound by the Deed.

- 23.4 An amendment, addition, revocation or replacement may not authorise the making of any payment to an Employer out of the Fund unless such payment is made under rule 3.6 of Division One.
- 23.5 The Trustee shall notify each Member of every amendment, addition, revocation or replacement described in clause 23.2 to or of the trusts of the Deed or part hereof in accordance with the Relevant Requirements. However, failure to comply with this clause 23.5 does not render any amendment, addition, revocation or replacement void, voidable or unenforceable.
- 23.6 Unless the Relevant Requirements permit, no amendment, addition, revocation or replacement shall be made which will enable an individual person or persons to be appointed Trustee either in addition to or in substitution for a Constitutional Corporation.

24. TAXATION

- 24.1 In addition to any other powers conferred by the Deed or otherwise, where the Trustee is, or believes that it will become, liable for any Tax in respect of:
- (a) the receipt of contributions, deemed contributions or transfers to the Fund;
 - (b) the holding or disposal of the assets of the Fund;
 - (c) the receipt of income or gains of the Fund;
 - (d) any transaction or document concerning the Fund; or
 - (e) any payment out of the Fund,
- the Trustee may:
- (f) deduct an amount equal to the Tax or an amount which is a fair and reasonable estimate of the Tax from those contributions, transfers, assets, income, gains or payment as it thinks proper; and
 - (g) set aside and retain the Tax in the Fund upon trust for ultimate payment, or pay the Tax, to the relevant authority.
- 24.2 Upon payment of Tax to the relevant authority under clause 24.1(g), the Trustee will be released and discharged in respect of the retention and payment of the Tax.
- 24.3 Any amount which would otherwise be or deemed to be contributed, transferred, credited, allocated or otherwise set apart in respect of a Member or other person shall be reduced or otherwise adjusted in the manner and to the extent that the Trustee determines to be appropriate in taking account of the Tax referred to in clause 24.1.

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- 24.4 Notwithstanding any other provision of this Deed, the Trustee may, if applicable and subject to the Relevant Requirements, reduce any benefits which are payable or may become payable from the Fund to or in respect of a Member, or any other person, to take account of:
- (a) any Tax; or
 - (b) any other matter relating to Tax that the Trustee considers fair and reasonable to take into account in respect of particular Members or Members generally,
- and to the extent that no adjustment has been made in respect of that Tax or other matter under any other provision of this Deed.
- 24.5 The Trustee may at any time recalculate the Tax in respect of a person who is or has been a Member.
- 24.6 If the Tax in respect of a Member as recalculated is less than the Tax in respect of that person as previously determined, the Trustee may:
- (a) if the person remains a Member on the recalculation date, allocate the difference to the Member Account of the Member; or
 - (b) if the person is not a Member on the recalculation date, pay from the Fund to the person, or to an Approved Benefit Arrangement for that person, an amount equal to the difference.
- 24.7 If the Tax in respect of a Member as recalculated exceeds the Tax in respect of the person as previously determined, the Trustee may:
- (a) if the Member Account of the Member at the recalculation date is equal to or greater than the additional Tax, deduct the amount of the additional Tax from the Member Account;
 - (b) if the Member Account of the Member at the recalculation date is less than the additional Tax, deduct the amount of the additional Tax from the Member Account and the shortfall constitutes a debt immediately due and payable by that person to the Trustee and the Trustee may sue for that debt; or
 - (c) if the person is not a Member on the recalculation date, the additional Tax constitutes a debt due and payable by the person to the Trustee and the Trustee may sue for that debt.
- 24.8 If a person fails to provide the required information within fourteen (14) days of a request under rule 1.4 of Division One, the Trustee may determine the Tax in respect of the person on the basis of any assumptions which in the circumstances are reasonable and the person has no claim against the Trustee or the Fund for any loss suffered as a result of any such assumptions being incorrect.
- 24.9 Where a person makes or has made a statement to the Trustee that is:
- (a) in the opinion of the Trustee, relevant to the Trustee's determination of Tax in respect of the person; and
 - (b) reasonably believed by the Trustee to be untrue or misleading either by mis-statement or omission,

then the Trustee may recalculate the Tax in respect of the person having regard to what the Trustee reasonably considers to be the true circumstances of the person.

25. OVERRIDING PROVISION

25.1 Notwithstanding any other provision of the Deed, if there is a conflict between a provision of the Deed and any Relevant Requirement, the Relevant Requirement shall prevail.

25.2 Notwithstanding any other provision of the Deed, the Trustee may do all acts, matters and things as in the opinion of the Trustee are:

- (a) necessary or desirable in order to comply with or satisfy any Relevant Requirement, or
- (b) permitted by any Relevant Requirements.

26. CLOSURE OF FUND

26.1 The Trustee may declare in writing that the Fund shall be closed on a date specified by it ("**Closure Date**") where:

- (a) the Trustee decides that the Fund should be closed;
- (b) it appears to the Trustee that the Fund is insolvent;
- (c) the Fund must be closed pursuant to the Relevant Requirements; or
- (d) the Trustee agrees to transfer all moneys and other assets of the Fund to a Successor Fund.

26.2 On and from the Closure Date, the following provisions shall apply:

- (a) the Trustee shall notify the Employers and Members of the closure;
- (b) no further persons may apply to become or be admitted as Members;
- (c) no further contributions shall be received by the Fund, other than contributions due up to the Closure Date;
- (d) all arrears of contributions shall be called in;
- (e) as soon as practicable after the Closure Date and after making such allowance as the Trustee considers appropriate for the costs and expenses incurred and likely to be incurred in terminating the Fund, the Trustee, to the extent that the Fund is sufficient to do so, shall make such provisions from or within the Fund as it considers necessary to provide for payment in full of the following benefits and in the following order of priority:
 - (i) all benefits which had become payable to or in respect of any person prior to the Closure Date but which have not yet been fully paid;
 - (ii) benefits which were required to be preserved in the Fund in respect of Members who ceased service prior to the Closure Date;

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- (iii) minimum benefits which are required to be paid in respect of Members under the Relevant Requirements in respect of contributions by an Employer made in satisfaction of the PB Act or the SG Act;
- (iv) all benefits (excluding any amount payable under (iii) above) which would be payable in respect of Members assuming all Members were eligible to retire on the Closure Date;
- (v) such additional benefits (if any) as the Trustee determines;
- (f) any amount remaining in the Fund after the abovementioned provisions have been made, including the satisfaction of all expenses including taxation, shall be realised and the proceeds distributed by the Trustee to the Members or, at the Trustee's sole discretion, to such former Members as the Trustee deems to be fair and equitable;
- (g) if, notwithstanding the preceding provisions of this clause, the Fund or any provisions made as aforesaid should at any time prove to be insufficient to provide in full the benefits described in clause 26.2(e), all benefits then remaining unpaid shall be reduced in such manner and proportions as the Trustee deems to be fair and equitable;
- (h) subject to compliance with the preservation requirements of the Relevant Requirements, any benefit provided pursuant to this clause:
 - (i) may be provided in such form (whether deferred or other annuity, the right of participation in an Approved Benefit Arrangement, cash, life insurance policies or in any other form whatsoever) as the Trustee determines; and
 - (ii) is in lieu of and in full satisfaction of any benefit which, but for this clause, would otherwise have been or become payable pursuant to this Deed,

and all decisions of the Trustee as to the amount, form and method of provision of benefits pursuant to this clause are final and binding on all persons.

27. GOVERNING LAW

27.1 The governing law relative to the Deed and the Fund shall be that applicable in the State of Victoria ("**Governing Law**") PROVIDED HOWEVER that, in the event of a conflict between the Relevant Requirements and a law of the State of Victoria, the Relevant Requirements shall prevail.

27.2 The Deed is required to be interpreted so that it complies with the Governing Law. If any provision of this Deed does not so comply with such law, then the provision must be read down to give effect to the provision as far as possible. If it is not possible to give effect to the provision then it shall be deemed to be severed from the rest of the Deed.

DIVISION ONE – RULES OF THE ACCUMULATION DIVISION

1. MEMBERSHIP

- 1.1 Subject to the Relevant Requirements and any conditions imposed by the Trustee, the Fund may accept contributions from any person or Employer who wishes to contribute to the Fund and the person for whom such contributions are paid into the Fund shall become a Member of this Division of the Fund upon the terms and conditions contained in this Deed.
- 1.2 Application for membership of this Division shall be made in writing to the Trustee in a form acceptable to the Trustee PROVIDED THAT where the Trustee considers that special or extenuating circumstances exist, the Trustee may, subject to such special terms, conditions and restrictions as the Trustee considers appropriate, deem a person who is or was an Employee of an Employer and eligible to become a Member or is eligible to become a Spouse Member, but who has not actually made such an application, to have been admitted as a Member or Spouse Member with effect from a date determined by the Trustee, not being earlier than the date on which the Employee or person eligible to become a Spouse Member first became eligible to apply for membership.
- 1.3 In accordance with the Relevant Requirements, before or as soon as practicable after admitting a person as a Member of this Division, the Trustee shall give to the Member a written statement containing details of the kind of benefits provided by the Fund to the Member's class of membership in this Division, the conditions relating to those benefits and the method of determining entitlements.
- 1.4 Every applicant, every Member and every person entitled to a benefit in this Division shall give to the Trustee such information and produce such documents as the Trustee requires.
- 1.5 If a Member fails to provide information or evidence as and when required by the Trustee and to its satisfaction, the Trustee may refuse to accept any contributions or transfers in respect of the Member. Such information required by the Trustee may include the Member's name, date of birth, address or such other information as deemed necessary by the Trustee.
- 1.6 If the Trustee accepts an application for membership, the applicant shall be admitted as a Member of this Division from a date determined by the Trustee.
- 1.7 Each person on admission as a Member of this Division is ipso facto deemed to have approved of and becomes bound by the Deed.

2. MEMBERSHIP CLASSIFICATION

- 2.1 There shall be three classes of membership under this Division (Employer Sponsored Members, Spouse Members and Public Offer Members) and a Member's class of membership when joining the Fund shall be determined in accordance with this rule 2 PROVIDED HOWEVER that the Trustee shall have the power to remove a membership class or create such new membership classes with such rights and entitlements as the Trustee shall from time to time determine. The Trustee may determine that specific rights and entitlements shall apply to one or more membership classes and, unless the Trustee determines otherwise, the rules in this Division shall apply to all Members in this Division.

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- 2.2 A person shall be eligible for membership of this Division as an Employer Sponsored Member where that person is:
- (a) an Employee of an Employer;
 - (b) a member of the Parliament of the Commonwealth and is entitled to superannuation contributions in accordance with the *Parliamentary Superannuation Act 2004*; or
 - (c) a member of the Parliament of a State, the Legislative Assembly for the Australian Capital Territory or the Legislative Assembly of the Northern Territory and is entitled to have superannuation contributions made to the Fund.
- 2.3 A person shall be eligible for membership of this Division as a Spouse Member where that person is the spouse (or former spouse) of a Member, or the spouse of a member of another superannuation fund where that member's employer is a standard employer-sponsor (as defined in the SIS Act) of both the Fund and the other fund, or as permitted under the Relevant Requirements.
- 2.4 An Eligible Person who wishes to contribute to the Fund in accordance with rule 4 of this Division shall be eligible for membership of this Division as a Public Offer Member and the Trustee shall only admit such persons to membership of the Fund if the Trustee holds the relevant licence from a Responsible Authority.
- 2.5 In accordance with Section 15A of the SIS Act and for the purposes of this Deed:
- (a) a member of the Parliament of the Commonwealth is an employee of the Commonwealth;
 - (b) a member of the Parliament of a State is an employee of the State;
 - (c) a member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory; and
 - (d) a member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.

3. EMPLOYER CONTRIBUTIONS

- 3.1 Subject to this Deed and the Relevant Requirements, each Employer shall contribute to the Fund in a manner agreed to by the Trustee.
- 3.2 The amount of such contributions shall be determined by the Employer who, amongst other things, shall have regard to:
- (a) legislation in regard to employer obligations for superannuation contributions in respect of Employees;
 - (b) the level of salary sacrifice contributions nominated by a Member to be made to the Fund by the Member's Employer on their behalf; and
 - (c) such arrangements that an Employer may determine either generally or in any particular case.

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- 3.3 Each Employer may without further authority than this rule retain out of the actual remuneration paid to each Member employed by it the amount of the Member's contributions and the amount so retained shall be held by the Employer UPON TRUST for the Fund to be paid to the Fund in such manner and at such time as required by the Relevant Requirements.
- 3.4 Subject to the Deed, contributions to the Fund by an Employer in respect of a Member and, where applicable, by a Member may be applied inter alia in payment of premiums under each insurance policy that is held by the Trustee under clause 6.
- 3.5 The Trustee may accept a Shortfall Component as a contribution in respect of a Member.
- 3.6 The Trustee may refund contributions where those contributions have been paid by mistake and should never have been so paid.
- 3.7 (a) Contributions in respect of a Member admitted to the Fund under rule 2.2(b) of this Division may be made to the Fund in accordance with the following legislation:
- (i) *Parliamentary Superannuation Act 2004;*
 - (ii) *Remuneration and Allowances Act 1990.*
- (b) Contributions in respect of a Member admitted to the Fund under rule 2.2(c) of this Division may be made to the Fund in accordance with such legislation that enables contributions in respect of that person to be paid to the Fund.
- 3.8 In this rule 3, "**contribute**" in relation to an Employer includes payments made by the Employer or caused to be made on behalf of the Employer by another Employer or person.

4. MEMBER CONTRIBUTIONS

Subject to this Deed and the Relevant Requirements, contributions of any amount may be made to the Fund by or for any Member in a manner agreed to by the Trustee.

5. WITHDRAWAL BENEFIT

Subject to this Deed and the Relevant Requirements, the benefit entitlement of a Member who is not being entitled to a benefit under any other provision of the Trust Deed other than rule 8 shall be the Member Account of the Member.

6. DEATH BENEFIT

Subject to this Deed, the benefit to be provided upon the death of a Member shall be an amount equal to the sum of the following:

- (a) the Member Account of the Member;
- (b) the amount of insurance (if any) provided in respect of that Member pursuant to this Deed; and
- (c) such other amount (if any) as the Trustee shall determine from time to time.

7. TOTAL AND PERMANENT DISABLEMENT BENEFIT

Subject to this Deed, the benefit payable to a Member having suffered Total and Permanent Disablement shall be an amount equal to the sum of the following:

- (a) the Member Account of the Member;
- (b) the amount of insurance cover (if any) provided in respect of that Member pursuant to this Deed; and
- (c) such other amount (if any) as the Trustee may determine from time to time.

8. OTHER INSURED BENEFITS

Subject to the Relevant Requirements, if a member is entitled to a benefit under a policy of insurance, other than in respect of Death or Total and Permanent Disablement, the Trustee shall pay the amount of insurance provided in respect of that Member pursuant to this Deed.

DIVISION TWO - RULES OF THE ALLOCATED PENSION DIVISION

1. INTERPRETATION

In this Division, unless the context otherwise requires:

"Annuity" means an annuity as defined for the purposes of the Relevant Requirements.

"Eligible Termination Payment" has the same meaning as contained in the Tax Act.

"Financial Assistance" means financial assistance granted to the Fund under Part 23 of the SIS Act.

"pension" means a benefit payable by instalments out of the Pension Account of a Pensioner and means a pension under rule 6.1 of this Division.

"Pensioner" means a Member of this Division 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.

"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.

"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 Requirements to or from any Approved Benefit Arrangement and shall include an Eligible 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 an Eligible Termination Payment in relation to a Member under Division 17B of the Tax Act.

2. MEMBERSHIP

2.1 The provisions of this Division shall apply to Members who have elected to receive an allocated pension benefit from the Fund. Subject to the Relevant Requirements and any conditions imposed by the Trustee, the Fund may accept contributions, transfers from the Accumulation Division or transfers from any other Approved Benefit Arrangement in respect of a person who wishes to join this Division and the person for whom such contributions or transfers are made shall become a Member of this Division of the Fund upon the terms and conditions contained in this Deed and Division.

2.2 Application for membership of this Division shall be made in writing to the Trustee in a form acceptable to the Trustee.

2.3 In accordance with the Relevant Requirements, before or as soon as practicable after admitting a person as a Member of this Division, the Trustee shall give to the Member a written statement containing details of the kind of benefits provided by the Fund to the Member's class of membership in this Division, the conditions relating to those benefits and the method of determining entitlements.

2.4 Every applicant, every Member and every person entitled to a benefit in this Division shall give to the Trustee such information and produce such documents as the Trustee requires.

- 2.5 If a Member fails to provide information or evidence as and when required by the Trustee and to its satisfaction, the Trustee may refuse to accept any contributions or transfers in respect of the Member. Such information required by the Trustee may include the Member's name, date of birth, address or such other information as deemed necessary by the Trustee.
- 2.6 If the Trustee accepts an application for membership, the applicant shall be admitted as a Member of this Division from a date determined by the Trustee.
- 2.7 Each person on admission as a Member of this Division is ipso facto deemed to have approved of and becomes bound by the Deed.

3. MEMBERSHIP CLASSIFICATION

There shall be one class of membership under this Division (Allocated Pension Members) PROVIDED HOWEVER that the Trustee shall have the power to create such other membership classes with such rights and entitlements as the Trustee shall from time to time determine. The Trustee may determine that specific rights and entitlements shall apply to one or more membership classes and, unless the Trustee determines otherwise, the rules in this Division shall apply to all Members in this Division.

4. CONTRIBUTIONS

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

5. PENSION PAYMENT AND PENSION ACCOUNT

5.1 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 Division One, 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 Fund to the Member or beneficiary (as the case may be) on the conditions set out in rule 6 of this Division:

- (a) in lieu of the whole or a portion of any lump sum benefit which is otherwise payable to the Member or Beneficiary; or
- (b) in respect of any amounts credited to the Pension Account of a Member or beneficiary under rule 5.3(a)(ii).

5.2 Establishment of Pension Account

- (a) Where a Member or a beneficiary has made an application under rule 5.1 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.
- (b) One or more Pension Accounts shall be established for a new Member who joins this Division without having previously been a Member of the Accumulation Division.

5.3 Operation of Pension Account

- (a) The following amounts shall be credited to the Pension Account of a Pensioner:
- (i) any amount transferred under sub-rule 5.2(a);
 - (ii) any amount paid into the Fund in respect of a Pensioner as a contribution, transfer or a Roll Over Payment which the Trustee considers it appropriate to credit;
 - (iii) 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;
 - (iv) such earnings of the Fund ascertained in accordance with the terms of this Deed as the Trustee shall determine to be equitable;
 - (v) any credit arising out of any adjustments made in accordance with the terms of this Deed;
 - (vi) any Shortfall Component paid in respect of the Pensioner;
 - (vii) any amount of Financial Assistance determined by the Trustee to be appropriate to credit; and
 - (viii) such other amounts as the Trustee shall from time to time determine.
- (b) The following amounts are to be debited to the Pension Account of a Pensioner:
- (i) any amount transferred out of the Fund in respect of a Pensioner as a transfer of a Roll Over Payment which the Trustee considers it appropriate to debit;
 - (ii) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
 - (iii) the costs of any policy effected by the Trustee in respect of the Pensioner which are not debited to an Account in accordance with the applicable terms of this Deed;
 - (iv) such proportion of any amount payable by way of Tax in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of a contribution, transfer or Roll Over Payment as the Trustee shall determine;
 - (v) such of the costs, charges and expenses incurred in accordance with this Deed as the Trustee shall determine to be equitable;
 - (vi) such of the amount paid in respect of the Trustee indemnity set out in this Deed as the Trustee shall determine to be equitable;
 - (vii) a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee shall determine to be equitable;
 - (viii) such negative earnings of the Fund ascertained in accordance with this Deed as the Trustee shall determine to be equitable;
 - (ix) any amount transferred to the Account of a beneficiary; and
 - (x) such other amounts as the Trustee shall from time to time determine.

5.4 Segregation of Pension Assets

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

- (a) 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
- (b) constitute the segregated assets as segregated current and non-current pension assets within the meaning of section 273A and section 273B 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 Requirements shall require.

6. ALLOCATED PENSION PAYMENT CONDITIONS

6.1 Method of Payment and Security

Where a pension is payable from the Fund, the following conditions shall apply to the payment of the pension:

- (a) the pension shall be paid from the Pension Account of the Pensioner;
- (b) the pension shall be paid at least annually;
- (c) 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 Requirements for the payment of a pension;
- (d) 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 Requirements; and
- (e) the capital value of the pension and the income from the pension cannot be used by a person as security for a borrowing.

6.2 Pension Account Limitation

Where a pension is payable to or in respect of a Member or a beneficiary, the total instalments of such pension shall, subject to the terms of this Deed, not exceed the amount held in the Pension Account of the Member or Pensioner at the relevant time.

6.3 Nominated Reversionary Beneficiary

- (a) A Member may upon admission and from time to time thereafter in a manner approved by the Trustee notify the Trustee of the name and address of any Reversionary Beneficiary.
- (b) The nomination may be varied or replaced from time to time in the manner approved by the Trustee and shall be subject to the conditions in clause 11.2.

6.4 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 Requirements.

6.5 Death of Pensioner

In the event of the death of a Pensioner whilst there is still an amount held in 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 11 PROVIDED HOWEVER that in the event that such an application is not in accordance with the Relevant Requirements, the balance of such Pension Account shall be dealt with in accordance with clause 13 as though it were a forfeited benefit or otherwise as permitted by the Relevant Requirements.

7. COMMUTATION OF PENSION

7.1 Conditions of Commutation

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 Fund to such Pensioner or Reversionary Beneficiary as applicable PROVIDED THAT:

- (a) the commutation of the pension is permitted by the Relevant Requirements;
- (b) the commutation would not be to the disadvantage of the Fund, the remaining Members, Pensioners or Reversionary Beneficiaries;
- (c) the amount of the commutation must not exceed the amount held in the Pension Account of the Pensioner; and
- (d) where any amount remains in the Fund 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 clause 13 as though it were a forfeited benefit.

7.2 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.