

**PERPETUAL SUPERANNUATION LIMITED**  
ABN 84 008 416 831

**DEED OF AMENDMENT**

---

**PERPETUAL SUPER WRAP**

---

Perpetual 

Perpetual Legal Services  
Level 12, Angel Place  
123 Pitt Street  
Sydney NSW 2000

## AMENDING DEED

DEED POLL dated 17 June 2015

### BY

**PERPETUAL SUPERANNUATION LIMITED** ABN 84 008 416 831 of Level 12, Angel Place, 123 Pitt Street, Sydney, NSW 2000 (**Trustee**)

### RECITALS:

- A. The Trustee is the trustee of a superannuation fund known as Perpetual Super Wrap ABN 22 897 174 641 (the **Fund**), which was established under a trust deed dated 30 September 2011 (the **Trust Deed**).
- B. Clause 16 of the Trust Deed permits the Trustee to vary the Trust Deed by deed executed by the Trustee with effect from such date as the Trustee specifies in the deed.
- C. The Fund is a Qualifying Recognised Overseas Pension Scheme (**QROPS**) under United Kingdom (**UK**) legislation.
- D. A QROPS can receive a transfer of the value of a person's rights from a UK registered pension scheme without the person incurring UK tax charges.
- E. On 6 April 2015, the UK legislation was amended to require that a QROPS meet the "pension age test".
- F. The "pension age test" requires that money transferred from a UK registered scheme into a QROPS not be paid before the member is 55 unless the member retired due to ill-health.
- G. If the Fund is no longer a QROPS:
  - (a) a person who transfers money into the Fund from a UK registered pension scheme will be liable for UK tax; and
  - (b) a person who receives the portion of their interest in the Fund that was transferred from the UK registered pension scheme will be liable for UK tax.
- H. The Trustee wishes to amend the Trust Deed to ensure that the Fund can continue to be a QROPS by restricting the circumstances in which a member can be paid the portion of their interest in the Fund that was transferred from the UK registered pension scheme so that it satisfies the "pension age test".

### OPERATIVE PROVISIONS

#### 1. Interpretation

Except where expressly indicated otherwise, defined terms in this Deed of Amendment have the meaning given to them in the Trust Deed.

---

2. **Amendment**

The Trust Deed is amended as follows:

2.1 Clause 1.1 is amended by inserting the following definition in appropriate alphabetical order:

"QROPS" means a Qualifying Recognised Overseas Pension Scheme.

2.2 Clause 6.1(f) is amended by replacing the full-stop with "; and".

2.3 Clause 6.1 is amended by inserting the following new paragraph (g):

(g) if and for so long as the Trustee has decided that the Fund is to be a QROPS:

(i) no benefit is payable to a Beneficiary in circumstances that would cause the Fund to cease to be a QROPS;

(ii) a Member who transfers (or has transferred) money into the Fund from a United Kingdom pension fund on the basis that the Fund is a QROPS agrees to not exercise any statutory right that would cause the payment of a benefit from the Fund in circumstances that would cause the Fund to cease to be a QROPS; and

(iii) pursuant to clause 5.2, the Trustee may divide any account established under a Schedule or establish an additional account for money that was transferred into the Fund from a UK pension fund.

3. **Effective Date**

The amendments to the Trust Deed in clause 2 of this Deed of Amendment take effect on 6 April 2015.

4. **Trust not confirmed**

Nothing expressly or impliedly contained in this Deed of Amendment is effective to confirm, declare, or otherwise acknowledge any of the trusts declared under the Trust Deed or any of the trusts to which property is subject at the date of this Deed of Amendment, or to impress any new or additional trusts upon property held on trust as at the date of this Deed of Amendment.

5. **Trustee and Members bound**

The Trustee and Members are bound by the terms of the Trust Deed as amended by this Deed of Amendment.

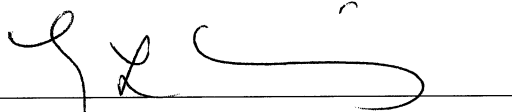
6. **Governing Law**

This deed is governed by, and is to be construed in accordance with, the laws of the state of New South Wales.

---

**EXECUTED** as a deed poll

Signed, sealed, and delivered by **Perpetual Superannuation Limited** ABN 84 008 416 831:

  
\_\_\_\_\_  
Signature of Director

*GILLIAN LARKING*  
\_\_\_\_\_  
Name of Director

  
\_\_\_\_\_  
Signature of ~~Director~~/Company Secretary

**Sylvie Dimarco**  
\_\_\_\_\_  
Name of ~~Director~~/Company Secretary

**PERPETUAL SUPER WRAP**

**TRUST DEED**

**AND RULES OF FUND**

**THIS DEED** is made on the 30<sup>th</sup> day of **SEPTEMBER, 2011**

**BY:** **PERPETUAL SUPERANNUATION LIMITED**

(ABN 84 008 416 831) having its registered office at Level 12, 123 Pitt Street, Sydney in the State of New South Wales ("the Trustee").

**WHEREAS:**

- A. The Trustee wishes to establish an indefinitely continuing superannuation plan ("the Fund") to provide:
- (i) benefits for members of the Fund in the event of the retirement of members from gainful employment or occupation;
  - (ii) benefits for members of the Fund in the event of members attaining an age under which benefits can be received under the Superannuation Industry (Supervision) Act, 1993 ("SIS");
  - (iii) the provision of benefits for dependants of members of the Fund in the event of the death of the member before such retirement or attaining such age; and
  - (iv) for any further or ancillary purposes which may be approved by the Australian Prudential Regulation Authority under SIS.
- B. The Trustee has agreed to act as the first Trustee of the Fund.

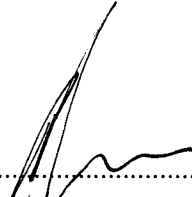
**WITNESSES:**

1. The Fund shall be named Perpetual Super Wrap.
2. The Fund shall come into operation on ~~30~~ **SEPTEMBER 2011** (the "Commencing Date").
3. The "Rules" means the Rules scheduled to this Deed, as amended from time to time, which shall have effect as if set out in this Deed.
4. The Trustee may from the Commencing Date accept contributions to the Fund and all the assets of the Fund from time to time shall be vested in the Trustee upon trust to apply the same in the manner set forth in the Rules.
5. The Fund shall be managed and administered in all respects according to the Rules.
6. The first Trustee shall continue as Trustee until a substitute Trustee is appointed in accordance with the Rules. The Trustee of the Fund from time to time shall be appointed and may resign or be removed in accordance with the Rules.
7. The provisions of this Deed may be amended in the manner set out in the Rules.
8. This Deed and the Rules shall be governed by and construed in accordance with the law of New South Wales.

**IN WITNESS WHEREOF** the party named above has executed this Deed on the date first above written.

The common seal of )  
**PERPETUAL SUPERANNUATION** )  
**LIMITED** )  
was hereunto affixed in accordance )  
with its articles of association and )  
in the presence of: )

  
.....  
Secretary

  
.....  
Director

# PERPETUAL SUPER WRAP

## TABLE OF CONTENTS

<b>1. INTERPRETATION.....</b>	<b>1</b>
1.1 DEFINITIONS.....	1
1.2 GENERAL .....	4
<b>2. PARTICIPATION.....</b>	<b>5</b>
2.1 MEMBERS .....	5
2.2 INFORMATION .....	5
2.3 CONDITIONS.....	5
2.4 CESSATION OF MEMBERSHIP.....	5
2.5 NOTICE TO APPLICANTS AND NEW MEMBERS.....	6
2.6 SPECIAL ARRANGEMENTS OR TERMS.....	6
<b>3. TRUSTEE .....</b>	<b>6</b>
3.1 APPOINTMENT AND REMOVAL OF THE TRUSTEE .....	6
3.2 LIABILITY OF TRUSTEE.....	6
3.3 INDEMNITY OF TRUSTEE .....	7
3.4 REMUNERATION OF TRUSTEE.....	7
3.5 DELEGATION BY TRUSTEE .....	7
3.6 CONFIDENTIALITY.....	8
3.7 TRUSTEE DISCRETION .....	8
<b>4. CONTRIBUTIONS.....</b>	<b>8</b>
4.1 MEMBER CONTRIBUTIONS .....	8
4.2 SPLITTING CONTRIBUTIONS.....	8
4.3 REPAYING CONTRIBUTIONS .....	8
<b>5. ACCOUNTS AND ALLOCATION OF PROFITS AND LOSSES.....</b>	<b>9</b>
5.1 ACCOUNTS.....	9
5.2 TRUSTEE POWERS – ACCOUNTS.....	9
<b>6. PAYMENT OF BENEFITS.....</b>	<b>9</b>
6.1 OVERRIDING RESTRICTIONS .....	9
6.2 DEATH BENEFITS .....	9
6.3A.....	10
6.3B.....	10
6.3CA .....	10
6.3CB .....	10
6.3CC .....	10
6.3D.....	11
6.3E.....	11
6.3F.....	11
6.3G.....	11
6.4 PERMANENT INCAPACITY .....	11
6.5 TEMPORARY INCAPACITY .....	11
6.6 DISCHARGE TO TRUSTEE.....	12
6.7 PRESERVATION OF BENEFITS .....	12
6.8 APPLICATION OF PRESERVED BENEFIT .....	12
6.9 PAYMENT.....	12
6.10 CAPITAL SUPPORTING AN ACCOUNT BASED PENSION OR A TERM ALLOCATED PENSION .....	13
<b>7. TRUSTEE'S POWER OF INVESTMENT AND SALE .....</b>	<b>14</b>
7.1 POWER OF INVESTMENT.....	14
7.2 INVESTMENT STRATEGY .....	14
7.3 ADDITIONAL POWERS .....	15



<b>8.</b>	<b>[NOT USED]</b> .....	<b>15</b>
<b>9.</b>	<b>RECORDS, FINANCIAL ACCOUNTS AND REPORTS</b> .....	<b>15</b>
9.1	FUND RECORDS .....	15
9.2	FINANCIAL ACCOUNTS.....	15
9.3	AUDITOR.....	15
9.4	DISCLOSURE AND REPORTING REQUIREMENTS .....	16
<b>10.</b>	<b>ADMINISTRATION</b> .....	<b>16</b>
10.1	APPOINTMENT OF ADMINISTRATOR AND ADVISERS .....	16
10.2	CHARGES AND EXPENSES.....	16
<b>11.</b>	<b>TRANSFERS</b> .....	<b>17</b>
11.1	TRANSFERS FROM OTHER FUNDS.....	17
11.2	TRANSFERS TO OTHER FUNDS .....	17
<b>12.</b>	<b>TAXATION AND GOVERNMENTAL CHARGES</b> .....	<b>17</b>
12.1	TRUSTEE'S POWER TO MAKE PROVISION FOR TAX LIABILITY .....	17
12.2	TRUSTEE'S POWER TO PAY TAX AND GOVERNMENTAL CHARGES .....	18
12.3	DEDUCTION OF TAX AND GOVERNMENTAL CHARGES .....	18
12.4	TRUSTEE'S POWER TO TRANSFER TAX LIABILITY .....	18
12.5	NO ACCOUNTING TO MEMBERS .....	18
<b>13.</b>	<b>FORFEITURE OF ENTITLEMENTS</b> .....	<b>18</b>
13.1	CONDITIONS OF FORFEITURE.....	18
13.2	APPLICATION OF FORFEITED BENEFITS .....	18
<b>14.</b>	<b>LIEN OVER BENEFITS</b> .....	<b>18</b>
14.1	TRUSTEE'S LIEN .....	18
14.2	DEDUCTION FROM BENEFIT .....	19
<b>15.</b>	<b>LIMITS ON CONTRIBUTIONS &amp; BENEFITS</b> .....	<b>19</b>
15.1	CONTRIBUTIONS.....	19
15.2	BENEFITS .....	19
<b>16.</b>	<b>VARIATION OF DEED AND RULES</b> .....	<b>19</b>
16.1	METHOD OF VARIATION.....	19
16.2	ADVICE TO MEMBERS.....	19
16.3	TRUSTEE'S RIGHT TO VARY LIMITED .....	19
<b>17.</b>	<b>LEGISLATIVE RESTRAINTS</b> .....	<b>20</b>
<b>18.</b>	<b>NOTICES</b> .....	<b>21</b>
18.1	NOTICE TO MEMBERS .....	21
18.2	NOTICE TO TRUSTEE .....	21
18.3	SERVICE BY POST.....	21
<b>19.</b>	<b>WINDING UP</b> .....	<b>21</b>
19.1	WINDING UP OF THE TRUSTEE.....	21
19.2	TRUSTEE'S EXPENSES AND PAYMENT OF BENEFITS.....	21
19.3	POWER OF TRUSTEE IN WINDING UP.....	21
<b>20.</b>	<b>RESOLUTION OF QUESTIONS OR DISPUTES</b> .....	<b>22</b>
	<b><u>SCHEDULE</u></b> .....	<b>23</b>
	<b>ACCOUNTS (CLAUSE 5)</b> .....	<b>23</b>
A2.1	MEMBER CONTRIBUTION ACCOUNT .....	23

A2.1A	SPECIAL MEMBER CONTRIBUTION ACCOUNT.....	23
A2.3	PENSION ACCOUNTS .....	24
A2.4	RESERVE ACCOUNTS .....	24
A2.5	FOREGONE BENEFITS ACCOUNT .....	25

## RULES OF PERPETUAL SUPER WRAP

### 1. INTERPRETATION

#### 1.1 Definitions

In the Rules unless the context or subject matter otherwise requires:

"Account Based Pension" means, subject to the pension complying with the definition of an "account-based pension" (and where relevant, a "transition to retirement income stream") under SIS, a pension payable from the Fund which is not a Term Allocated Pension, and under which the Beneficiary has the right to receive regular income payments, such payments being determined on the bases agreed between the Trustee and the Beneficiary from time to time.

"Account Based Pension Account" means the account established by the Trustee in respect of a Beneficiary in accordance with the Schedule to this Deed.

"ADI" means an authorised deposit-taking institution, as defined in the Banking Act 1959.

"Anti-Detriment Benefit" means an amount representing the increase in the superannuation lump sum payable (at the sole discretion of the Trustee) in respect of the death of a Member, as contemplated by the Tax Law, and subject to the requirements of the Tax Law.

"Approved Benefit Arrangement" means a fund or benefit arrangement, other than the Fund, to which a payment or transfer may be made from the Fund, or from which a payment or transfer may be accepted into the Fund, in accordance with the Relevant Law.

"Auditor" means an "approved auditor" as defined in the Relevant Law.

"Beneficiary" means a person presently beneficially entitled to receive a Benefit from the Fund.

"Benefit" means the amount paid or payable (as the case may be) from the Fund to or in respect of a Beneficiary, and includes an Account Based Pension and a Term Allocated Pension.

"Corporations Act" means the Corporations Act, 2001 and any regulations made or issued thereunder.

"Death Benefit" means, for a Member or Beneficiary and to the extent applicable, the total of the following amounts:

- (a) in respect of a Member:
  - (i) Member Credits; plus
  - (ii) any Insured Benefit payable to the Fund on the Member's death; plus
  - (iii) any Anti-Detriment Benefit payable in respect of the Member; and
- (b) in respect of a Beneficiary:
  - (i) the Beneficiary's Account Based Pension Account balance or Account Based Pension Account balances; plus
  - (ii) the Beneficiary's Term Allocated Pension Account balance or Term Allocated Pension Account balances; plus
  - (iii) any Insured Benefit payable to the Fund on the Beneficiary's death; and
- (c) for a Member or Beneficiary who was receiving a pension or pensions from the Fund (Account Based Pensions and Term Allocated Pension not to be counted for this purpose) when he or

she died, the amount payable on the death of the Member or Beneficiary in accordance with the terms of the pension or pensions.

"Deed" means the Deed to which the Rules are annexed and includes the Rules.

"Dependant" in relation to a Member or Beneficiary includes a spouse and child (including an adopted child, whether legally adopted or recognised by the Trustee as adopted) of the Member or Beneficiary, and any other person who in the opinion of the Trustee is or was at the relevant time wholly or partially dependent on the Member or Beneficiary for maintenance and support or who is taken to be a dependant under the Relevant Law.

"Family Law Act" means Part VIII B of the Family Law Act 1975 and any regulations made or issued under Part VIII B.

"Foregone Benefits Account" means an account established and managed by the Trustee in accordance with the Schedule to this Deed.

"Fund" means the superannuation fund established pursuant to the Deed, and all its assets, to be known as Perpetual Super Wrap.

"GST" means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended, or any replacement or other relevant legislation and regulations.

"Insured Benefits" means, in relation to a Member or Beneficiary, benefits (including the provision of a pension) paid to the Trustee under a Life Insurance Policy for the Fund in the event of the Member's or Beneficiary's death or Total and Permanent Disablement or in the nature of income protection insurance, but does not include benefits which the Trustee has secured under an investment account contract or investment linked contract as defined in the Life Insurance Act 1995.

"Investment Strategy" means the investment strategy of the Fund in accordance with clause 7.2.

"Life Insurance Policy" means a life insurance contract issued on the life of a Member or group of Members by the appointed insurer.

"Member" means any person who has been admitted as a Member of the Fund pursuant to clause 2.

"Member Credits" means in relation to a Member, the total value of all the Member Contribution Accounts in respect of a Member.

"Member Contribution Account" means the account established by the Trustee in respect of a Member and managed by the Trustee in accordance with the Schedule to this Deed.

"Non-lapsing Nomination" in respect of a Member or Beneficiary, means a written notice received by the Trustee from the Member or Beneficiary under clause 6.3CA which:

- (a) is in a form approved by the Trustee and meets any requirements determined from time to time by the Trustee for such Nominations;
- (b) is clear on its face that it is not intended to lapse at the end of any fixed period of time;
- (c) confirms a previous Non-lapsing Nomination or makes a new nomination in respect of the Death Benefit payable on the Member's or Beneficiary's death, the nominee or each nominee (if more than one) to be a Dependant or the Personal Representative of the Member or Beneficiary;
- (d) is intended by the Member or Beneficiary to be binding on the Trustee if the Trustee gives its consent in accordance with clause 6.3CB;
- (e) can be revoked or amended by the Member or Beneficiary at any time, in a form approved by the Trustee; and
- (f) for which the Trustee has given its consent in accordance with clause 6.3CB.

To avoid doubt, if the Trustee so determines a Non-lapsing Nomination may:

- (g) specify the proportions payable to each nominee (if there are more than one) and the form of the payment or payments;
- (h) provide that a nominee who does not satisfy a specified contingency will not have an entitlement and another nominee will take that entitlement instead;
- (i) provide that in the event of the death of a nominee who receives his or her entitlement as an Account Based Pension, Term Allocated Pension or a pension, the residue (if any) is to be paid to a person or persons (who, if required by the Relevant Law, must be Dependants of a particular deceased Member), whether such a person is named, is otherwise identifiable or is to be determined by the Trustee in its discretion in accordance with the Non-lapsing Nomination;
- (j) specify that a Death Benefit payable as an Account Based Pension, Term Allocated Pension or pension is not commutable;
- (k) specify or provide for anything else;

and in these cases, subject to the Relevant Law the Death Benefit must be paid in accordance with any of the matters so provided or specified in the Non-lapsing Nomination.

"Permanent Incapacity" has the meaning given to it under SIS.

"Pension Account" means an Account Based Pension Account or a Term Allocated Pension Account.

"Personal Representative" means, in relation to a Member or Beneficiary, the "legal personal representative" of that Member or Beneficiary as defined in the Relevant Law.

"Preserved Benefit" means that part of a Benefit in respect of a Member, or that part of the Member's interest in the Fund, as appropriate, which is required to be preserved under, and in accordance with, the Relevant Law.

"Regulator" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or the person for the time being holding the office of Commissioner of Taxation, according to the context in which the expression is used.

"Relevant Law" means:

- (a) SIS;
- (b) the Tax Act;
- (c) the Corporations Act;
- (d) the Family Law Act; and
- (e) from the date determined by the Trustee, any other statutory or regulatory requirement determined by the Trustee to be applicable;

PROVIDED THAT if an exemption from compliance with such requirement is granted, or a breach by the Trustee is consented to, by a Regulator, either generally or in respect of the Fund, the operation of the appropriate requirement is qualified accordingly.

"Reserve Account" means an account established and managed by the Trustee in accordance with the Schedule to this Deed.

"Rules" means these Rules (including the Schedule to this Deed), as altered or amended from time to time.

"SIS" means the Superannuation Industry (Supervision) Act, 1993 and any regulations made or issued thereunder.

"Special Member Contribution Account" means the account established by the Trustee in respect of a Member and managed by the Trustee in accordance with the Schedule to this Deed.

"Tax Act" means the Income Tax Assessment Act, 1997, the Income Tax Assessment Act, 1936, the Tax Administration Act, 1953, and any regulations made or issued thereunder.

"Taxation Reserve Account" means an account established and managed by the Trustee in accordance with the Schedule to this Deed.

"Temporary Incapacity" has the meaning given to it under SIS.

"Temporary Incapacity Benefit" means a Benefit payable to a Member in relation to the Member's Temporary Incapacity, but only to the extent that the Benefit comprises:

- (a) Insured Benefits arising in respect of a contract of income protection; plus
- (b) those portions (if any) of Member Credits (other than those referred to in (a) above) which are eligible under the Relevant Law to be paid in respect of a Member's Temporary Incapacity.

"Term Allocated Pension" means a pension under which the Beneficiary has the right to receive regular income payments for the applicable term, and which complies with the standards for a market linked pension under SIS. Subject to complying with those standards, the pension may have such other features as are agreed by the Trustee and the Beneficiary, the regular payments are determined on the basis agreed between the Trustee and the Beneficiary from time to time and continue until the account is exhausted, and the pension may be commuted (in whole or part) if requested by the Beneficiary and agreed to by the Trustee.

"Term Allocated Pension Account" means the account established by the Trustee in respect of a Beneficiary in accordance with the Schedule to this Deed.

"Total and Permanent Disablement" in respect of a Member:

- (a) has the same meaning as that expression, or the equivalent expression, in any Life Insurance Policy on the life of the Member; and
- (b) if there is no such Life Insurance Policy, the Permanent Incapacity of the Member.

"Trustee" means the trustee or trustees for the time being of the Fund whether original or substituted as hereafter provided.

"Written Notification of the Death" means a notice to the Trustee in writing containing proof of death satisfactory to the Trustee.

## **1.2 General**

- (a) Plural and gender of words

In the Rules unless the context otherwise requires, words importing any one gender shall be deemed to include the other gender and words importing the singular number shall be deemed to include the plural number and vice versa.

- (b) Headings

The headings in the Rules are for convenience of reference only and shall not affect the interpretation of the Rules.

- (c) Defined Words

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

(d) Statutory Enactments

References in the Deed to any Act shall be construed as referring to that Act as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for such Act.

(e) Reference to person

A reference to a person in the Rules includes a firm, body corporate, unincorporated association or governmental authority.

## **2. PARTICIPATION**

### **2.1 *Members***

- (a) The Trustee may in its discretion admit a person to membership of the Fund where the Trustee can do so in accordance with the Relevant Law.
- (b) To avoid doubt but subject to the Relevant Law, where a person is to be admitted to membership of the Fund by virtue of being a non-member spouse who is entitled to a payment split under the Family Law Act, such admission to membership is contingent on the person making such application or meeting such other requirements as the Trustee determines.

### **2.2 *Information***

- (a) The Trustee may require both prospective Members and Members, to complete application forms, provide information and evidence, and undergo medical examinations and tests as the Trustee considers necessary or desirable.
- (b) Subject to the Rules if
  - (i) a prospective Member or a Member fails to comply with paragraph (a) of this clause or to satisfy any test, standard or requirement to the satisfaction of the Trustee; or
  - (ii) any statement made or evidence provided by or in respect of a prospective Member or a Member (whether in connection with an application to become a Member or otherwise) is found to contain any mis-statement, or there has been a material non-disclosure of relevant information;

the Trustee may impose special terms, conditions and restrictions in respect of prospective Insured Benefits to be provided under the Fund.

### **2.3 *Conditions***

Upon becoming a Member of the Fund the Member is deemed to have approved of and is bound by the Rules.

### **2.4 *Cessation of Membership***

Membership of the Fund ceases on:

- (a) payment in full of the Benefit under the Fund to or in respect of the Member; or
- (b) forfeiture of the Member's entire interest in the Fund under clause 13; or

- (c) transfer of the Member's entire interest in the Fund under clause 11.2, whichever occurs first.

## **2.5 *Notice to Applicants and New Members***

The Trustee shall give to applicants for membership, and new Members of the Fund, statements containing the information required to be disclosed to applicants and new Members by the Relevant Law in the manner, and in the circumstances prescribed by the Relevant Law.

## **2.6 *Special Arrangements or Terms***

The Trustee may determine a special arrangement or special terms to apply in respect of a Member or a group of Members (including a Beneficiary who has a right or entitlement through a Member) and such special arrangements or special terms shall, subject to the Relevant Law, apply notwithstanding any other provision of the Rules.

# **3. TRUSTEE**

## **3.1 *Appointment and Removal of the Trustee***

- (a) The Trustee shall be a constitutional corporation (as the term is defined in the Relevant Law) and hold an RSE licence (as that term is defined under the Relevant Law).
- (b) Each Member is deemed, upon admission to membership, to have confirmed his or her acceptance of the appointment of the Trustee.
- (c) A Trustee shall cease to hold office on and from the date:
  - (i) the Trustee resigns its office and appoints a replacement trustee which meets the requirements of the Relevant Law and this Deed; or
  - (ii) subject to the Relevant Law, the Trustee is removed from office by a Regulator;
  - (iii) the Trustee goes into liquidation or is placed under receivership, or enters into a compromise relationship with creditors, or is wound up, and a replacement trustee which meets the requirements of the Relevant Law and this Deed is appointed.
- (d) Any new Trustee shall, upon and by virtue of appointment, have all the powers, authorities, discretions and duties conferred or imposed on or undertaken by the Trustee under the Rules or otherwise by law.
- (e) On and from the date of appointment of the new Trustee, the assets of the Fund shall become vested in the new Trustee.
- (f) The retiring Trustee must deliver to the new Trustee all books, documents, records and other property relating to the Fund.

## **3.2 *Liability of Trustee***

- (a) The Trustee is only liable for its acts and omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.
- (b) Other than in the circumstances provided in clause 3.2(a), or as otherwise provided at law, the Trustee shall not in any event be liable to any Member or Beneficiary to any greater extent than



in respect of the Assets actually vested in the Trustee or received by it in accordance with the provisions of this Deed.

### **3.3 Indemnity of Trustee**

- (a) The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund unless:
  - (i) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
  - (ii) the law prevents it.
- (b) A Member or Beneficiary must indemnify the Trustee for:
  - (i) any liability incurred; or
  - (ii) any overpayment made; or
  - (iii) any failure to provide for tax or other imposts,as a result of the Trustee relying on information given to it by that Member or Beneficiary.
- (c) The benefit of clauses 3.3(a) and 3.3(b) also applies to:
  - (i) any directors or employees of the Trustee;
  - (ii) the Secretary of the Fund;
  - (iii) any other person nominated in writing by the Trustee;
  - (iv) a former Trustee or any person who previously fell within any of (i) to (iii).

### **3.4 Remuneration of Trustee**

The Trustee is entitled to charge fees and recover the costs and disbursements incurred in administering the Fund in accordance with clause 10.2.

### **3.5 Delegation by Trustee**

The Trustee may delegate any function to be performed under the Rules and any power, authority or discretion exercisable by it (including a power or discretion which it has a duty to exercise or perform and the power of delegation) to any other person, firm or company (including an associated company) in such manner and upon such terms and conditions as it thinks fit. The Trustee may vary or revoke any such delegation as it thinks fit and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.

### **3.6 Confidentiality**

The Trustee and the members of each policy committee appointed, if any, shall be required to treat as confidential any information acquired in the course of performing their responsibilities and only use that information for the purposes of the Fund.

### **3.7 Trustee Discretion**

The Trustee, in the exercise of powers and discretions vested in it under the Rules, shall have an absolute and uncontrolled discretion and may exercise or enforce all or any powers and discretions from time to time or at any time, or may refrain from exercising all or any powers or discretions from time to time, or at all.

## **4. CONTRIBUTIONS**

### **4.1 Member Contributions**

- (a) Subject to clause 15.1, the Trustee may accept contributions by or on behalf of a Member.
- (b) Contributions may be paid by cheque or in any other manner approved by the Trustee.
- (c) The Member may request the Trustee to accept contributions to the Fund made through any direct payment facility and the Trustee shall:
  - (i) credit the Member Contribution Accounts with the relevant contribution with effect on the date the periodical deduction is scheduled to occur; and
  - (ii) debit the Member Contribution Accounts with the amount incorrectly credited if, for any reason, the periodical deduction is not effected at the scheduled time.

### **4.2 Splitting Contributions**

If permitted by the Relevant Law and agreed by the Trustee, a contribution by or on behalf of a Member may in whole or part be applied to the Member Contribution Accounts or otherwise on behalf of a second Member. If so, for the purposes of the Rules the amount so applied is deemed to be a contribution made by the second Member. To avoid doubt, for this purpose but subject to the Relevant Law the Trustee may admit a person to membership of the Fund without an application having been made by or on behalf of the person.

### **4.3 Repaying Contributions**

If required by the Relevant Law, a contribution by or on behalf of a Member shall be repaid by the Trustee to the person, and within the time, specified in the Relevant Law. In making a repayment, the Trustee may adjust the amount to be repaid to account for investment earnings (whether positive or negative) and fees, costs and expenses as permitted by the Relevant Law.

## **5. ACCOUNTS AND ALLOCATION OF PROFITS AND LOSSES**

### **5.1 *Accounts***

The Trustee shall maintain accounts in respect of Members and/or Beneficiaries and/or the Fund in accordance with the Schedule to this Deed.

### **5.2 *Trustee Powers – Accounts***

- (a) The Trustee may sub-divide any account established under this Deed, or establish additional accounts, if, in the opinion of the Trustee, it is appropriate or desirable to do so for the purposes of the Fund.
- (b) The Trustee may vary the items to be credited or debited to any of the accounts established under this Deed if, in the opinion of the Trustee, it is necessary or desirable to do so, for the purposes of the Fund having regard to the interests of Members and Beneficiaries.

## **6. PAYMENT OF BENEFITS**

### **6.1 *Overriding Restrictions***

Notwithstanding anything expressed or implied to the contrary in the Rules:

- (a) the Trustee shall limit, adjust, pay, or delay the payment of a Benefit, or take such other appropriate action as is, in the opinion of the Trustee, necessary to ensure the Fund complies with the Relevant Law;
- (b) no deduction, reduction, forfeiture or other adjustment shall be made to or from any Benefit that has accrued, or become payable, to a Beneficiary in breach of the Relevant Law;
- (c) in any case where the Trustee applies for insurance of any part of the Benefit in respect of a Member, such Benefit shall (unless otherwise determined by the Trustee), be reduced to the extent to which the Trustee is unable to effect such insurance on terms acceptable to the Trustee, or by the amount of any such insurance or part thereof which, having been effected, the insurer declares void, or for which the insurer refuses liability, for any reason;
- (d) a Beneficiary shall accept payment of the Benefit calculated by the Trustee in full discharge of all claims on the Fund;
- (e) the Trustee shall ensure Benefits are fully secured if so required under the Relevant Law, but the Trustee shall not be liable to provide Benefits greater in amount than can be secured by the assets of the Fund;
- (f) the Trustee may, at the request of a Member, pay to or apply on behalf of the Member any part or the whole of the Member Contribution Accounts, subject to the Relevant Law. To avoid doubt, this includes:
  - (i) a Benefit being paid as a non-commutable pension (including an Account Based Pension or Term Allocated Pension) as permitted by the Relevant Law; and
  - (ii) a payment in accordance with a release authority as permitted by the Relevant Law.

### **6.2 *Death Benefits***

A Member's interest in the Fund ceases immediately on his or her death and the Trustee must pay the Death Benefit as follows:

- (a) if the Trustee holds for the Member a Non-lapsing Nomination, in accordance with the terms of the Non-lapsing Nomination; or
- (b) if the Trustee does not hold a Non-lapsing Nomination for the Member, to one or more of the Member's Dependants and Personal Representative in the proportions determined by the Trustee in its absolute discretion, but having regard to any nominations made by the Member.
- (c) If, to the Trustee's knowledge, there is no Dependant or Personal Representative and the Trustee has a reasonable belief that there will not be a Personal Representative appointed, the Death Benefit may be paid to any other person as determined by the Trustee.

#### **6.3A**

The interest in the Fund of a Beneficiary who is not a Member ("**Death Benefit Pensioner**") ceases immediately on his or her death and the Trustee must pay the Death Benefit as follows:

- (a) if the Trustee holds a Non-lapsing Nomination for the Death Benefit Pensioner, in accordance with the terms of the Non-lapsing Nomination, but if a nominee predeceases the Death Benefit Beneficiary who made the nomination or for any other reason (including without limitation that the nomination, or the part of it that relates to a particular nominee, is not valid at law) it cannot be paid, the Death Benefit (or in the case of multiple nominees, the relevant part of the Death Benefit) is to be paid to the Death Benefit Pensioner's Personal Representative;
- (b) otherwise:
  - (i) to the Death Benefit Pensioner's Dependant or Personal Representative (having regard to any nominations made by the Death Benefit Pensioner); or
  - (ii) if, to the Trustee's knowledge, there is no Dependant or Personal Representative and the Trustee has a reasonable belief that there will not be a Personal Representative appointed, the Death Benefit may be paid to any other person as determined by the Trustee.

#### **6.3B**

The Trustee must consider, but need not follow, a nomination given to the Trustee by a Member in a form approved by the Trustee when considering to whom to pay a Death Benefit under clause 6.3.

#### **6.3CA**

A Member or Beneficiary may give the Trustee a notice which is intended by the Member or Beneficiary to be a Non-lapsing Nomination.

#### **6.3CB**

If a Member or Beneficiary gives a notice to the Trustee under clause 6.3CA and the Trustee is satisfied that the notice is an exercise of discretion by the Member or Beneficiary, the Trustee may consent to the exercise of that discretion (which includes the giving of the notice) on any grounds that the Trustee considers appropriate.

#### **6.3CC**

A Non-lapsing Nomination remains current until:

- (a) it is revoked; or
- (b) the Member or Beneficiary gives the Trustee another Non-lapsing Nomination.

A Member's or Beneficiary's Non-lapsing Nomination wholly revokes the Member's or Beneficiary's previous Non-lapsing Nomination.

### **6.3D**

At any time, by notice in writing to the Trustee, a Member or Beneficiary may revoke or amend a current Non-lapsing Nomination if the Trustee is satisfied that the notice is an exercise of discretion by the Member or Beneficiary and the Trustee consents to the exercise of that discretion. The Trustee may consent or refuse to consent as it considers appropriate.

### **6.3E**

The Trustee must:

- (a) accept a notice to the Trustee as a Non-lapsing Nomination if the Trustee is satisfied the notice is a Non-lapsing Nomination;
- (b) accept a notice to the Trustee to revoke or amend a current Non-lapsing Nomination if the Trustee consents to the notice in accordance with clause 6.3D.

### **6.3F**

If at any time the Trustee considers that a proposed Non-lapsing Nomination is not sufficiently clear to allow the Trustee to pay a Death Benefit according to the nomination, the Trustee may refuse to accept it or give effect to it.

### **6.3G**

Without limiting the effect of clauses 3.2 and 3.3, the Trustee is discharged from any liability to, or claim by, any person whatsoever in respect of a Member's or Beneficiary's Death Benefit if:

- (i) the Trustee pays the Death Benefit in accordance with the Member's or Beneficiary's Non-lapsing Nomination and any confirmation or amendment of it; or
- (iii) the Trustee does not pay the Death Benefit in accordance with the Member's or Beneficiary's Non-lapsing Nomination and the Trustee reasonably believes that the nomination was revoked by the Member or Beneficiary.

## **6.4 *Permanent Incapacity***

On the Permanent Incapacity (proved to the satisfaction of the Trustee) of a Member, there shall be payable to the Member a Benefit equal to:

- (a) the Member Credits; and
- (b) the Insured Benefits, if any;

in respect of the Member.

## **6.5 *Temporary Incapacity***

- (a) On the Temporary Incapacity (proved to the satisfaction of the Trustee) of a Member, there shall be payable to the Member a Temporary Incapacity Benefit.
- (b) The Temporary Incapacity Benefit must be paid in accordance with the Relevant Law, and the restrictions contained therein.

## **6.6 Discharge to Trustee**

The receipt of any person to whom the Trustee is authorised to make payment shall be a full and true discharge to the Trustee, and the Trustee shall not be bound or concerned to see to the application of such payment.

## **6.7 Preservation of Benefits**

If all or any part of the Benefit payable under clause 6 is a Preserved Benefit, then the Preserved Benefit will only be payable in the following circumstances:

- (a) subject to the Relevant Law the Member's retirement from the workforce having attained age 55 or such other age as may be prescribed under the Relevant Law; or
- (b) the retirement of Member from the workforce on the grounds of Permanent Incapacity PROVIDED the Trustee is given proof that the disability is such that the payment may be made in accordance with the Relevant Law; or
- (c) the death of the Member; or
- (d) the Member attains age 65; or
- (e) such other circumstances as may be prescribed in the Relevant Law or approved by the Regulator, either generally, or in the specific instance.

## **6.8 Application of Preserved Benefit**

A Preserved Benefit may be transferred by the Trustee to an Approved Benefit Arrangement nominated by the Member or, subject to the Relevant Law, if the Trustee so determines retained in the Fund PROVIDED such transferee facility restricts the payment of the Preserved Benefit in the manner prescribed in the Relevant Law.

## **6.9 Payment**

- (a) Benefits under the Fund shall, subject to the Relevant Law, be payable as:
  - (i) a lump sum;
  - (ii) an Account Based Pension;
  - (iii) a Term Allocated Pension;
  - (iv) a pension or annuity issued by the appointed insurer (which may be purchased by the Trustee in the name of the Beneficiary);
  - (v) a combination of one or more lump sums, Account Based Pensions, Term Allocated Pension, pensions and annuities,

in accordance with clause 6 or otherwise as determined by the Trustee (taking into account the request of the Beneficiary). To avoid doubt, if the Relevant Law does not permit a Benefit or part of a Benefit to be paid as an Account Based Pension, a Term Allocation Pension, a pension or an annuity the Trustee shall not pay the Benefit or part of the Benefit in such form and if the Relevant Law so requires the Trustee shall commute an Account Based Pension, Term Allocated Pension, pension or annuity to a lump sum on such terms as it determines.

- (b) The Trustee shall pay the Benefit to the Beneficiary in accordance with the Rules and the Relevant Law PROVIDED the Trustee may, at the request of a Beneficiary, defer payment for 90 days or such other period acceptable, either generally or in the specific instance, under the Relevant Law.

- (c) If, under the Relevant Law, a Member is entitled to request payment of all or any part of the Member Credits which represent the amount transferred in the name of the Member to the Fund, the Trustee shall pay such amount to the Member on receipt of such documentation, properly completed, as it considers necessary or desirable.
- (d) The Trustee is not required to pay any Benefit on the death of a Member or Beneficiary until such time as the Trustee receives Written Notification of the Death.

#### **6.10 Capital supporting an Account Based Pension or a Term Allocated Pension**

- (a) This clause applies to an Account Based Pension or a Term Allocated Pension payable under this Deed.
- (b) The capital supporting an Account Based Pension or a Term Allocated Pension at the time the pension commences to be payable is the total of the following amounts as set out in the application form for the pension:
  - (i) any amount transferred or to be transferred to the Pension Account in respect of the pension from any of the other Member's Accounts of the Member;
  - (ii) amounts transferred to the Pension Account in respect of the pension under clause 11.1 or which are to be transferred to that Pension Account upon the receipt by the Trustee of payment of the amount and for which the Member is bound to the satisfaction of the Trustee to pay or arrange for payment of the amount to the Trustee; and
  - (iii) any contributions credited to the Pension Account in respect of the pension under clause 4.1.
- (c) The Trustee may:
  - (i) waive a Member's obligation to pay or arrange the payment of any amount described in clause 6.10(b)(ii); or
  - (ii) determine, for any reason, that an amount to be transferred to the Pension Account as described in clause 6.10(b)(i) will not in fact be transferred; or
  - (iii) both of the above.

If the Trustee makes any of those decisions, the Trustee may reduce the capital supporting the Account Based Pension or the Term Allocated Pension. For the avoidance of doubt, the Trustee may, under this rule, reduce the capital supporting the Account Based Pension or the Term Allocated Pension to zero.
- (d) For a pension which has commenced to be payable, the first payment of a pension instalment or of any amount in commutation of the pension will be the later of:
  - (i) as soon as practicable after:
    - (A) all amounts which are to be paid to the Trustee in respect of the pension have been paid to the Trustee and credited to the Pension Account in respect of the pension; and
    - (B) all amounts which are to be transferred by the Trustee from any of the Member's Accounts of the Member have been transferred to the Pension Account in respect of the pension; or
  - (ii) as agreed between the Trustee and the Member.
- (e) If the Trustee considers necessary for administrative, regulatory or tax purposes, the Trustee at any time has the power to, but is not bound to, commute an Account Based Pension or a Term Allocated Pension to which this clause applies and apply the commuted amount to a new pension or pay the commuted amount as a lump sum on such terms as the Trustee determines.

## **7. TRUSTEE'S POWER OF INVESTMENT AND SALE**

### **7.1 *Power of Investment***

- (a) The Trustee may, subject to the requirements of this clause 7.1, invest all money which is not required to meet current payments in any manner in which it could invest if it were personally entitled to the money, including:
  - (i) in investments authorised by the law relating to investment of trust funds;
  - (ii) in policies of life insurance;
  - (iii) in trusts or common funds;
  - (iv) on deposit or loan, with or without security;
  - (v) in real property;
  - (vi) in shares, stocks, notes, options, debentures or other securities;
  - (vii) in options, hedging contracts, futures contracts and other financial instruments.
- (b) If the Relevant Law permits, the Trustee may:
  - (i) mix investments with investments of other people or trusts; and
  - (ii) vary, replace, encumber and deal with the investments,as if it were dealing with its own property.
- (c) The Trustee must invest in a manner which complies with the Relevant Law.
- (d) The Trustee may only make a loan or give financial assistance to a person if that complies with the Relevant Law.
- (e) The Trustee may appoint nominees to hold investments. The appointment must comply with the Relevant Law.
- (f) The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit. The Trustee may only do so to the extent that the Relevant Law permits.
- (g) The Trustee may, subject to the other provisions of this Deed and of the Relevant Law, accept and act upon a direction from a Member in respect of the investments in which the Member Contribution Account and/or a Pension Account (as the case may be) of the Member is invested.

### **7.2 *Investment Strategy***

- (a) The Trustee shall adopt and carry out an Investment Strategy for the Fund which complies with the Relevant Law.
- (b) The Investment Strategy may provide for separate member strategies in respect of the interests of individual Members or groups of Members.
- (c) The Investment Strategy shall be reviewed and may be altered or replaced at any time and from time to time as the Trustee considers appropriate.



### **7.3 Additional Powers**

- (a) The Trustee shall effect Life Insurance Policies to secure prospective Insured Benefits for each Member who has requested Insured Benefits, subject to the insurance cover being available with the appointed insurer.
- (b) The Trustee may generally do all acts and things as the Trustee may consider necessary or convenient for the administration, maintenance and preservation of any investment of the Fund and in the performance of its obligations under the Rules.
- (c) Without limiting paragraph (b), for investment purposes the Trustee may aggregate or mix (or authorise a custodian to aggregate or mix) assets of the Fund with assets of another trust (not being part of the Fund), provided that the Trustee is reasonably satisfied:
  - (i) that there are in place adequate accounting or other measures to enable the Trustee (or the custodian) to identify assets and liabilities of the Fund and assets and liabilities of the other trust, notwithstanding that the assets are shares, units or other interests in a single entity;
  - (ii) that doing so is not adverse to the interests of Beneficiaries of the Fund.

### **8. [Not Used]**

## **9. RECORDS, FINANCIAL ACCOUNTS AND REPORTS**

### **9.1 Fund Records**

The Trustee shall keep or cause to be kept records of all Members and of all deaths, withdrawals, retirements, other terminations of employment and all other matters necessary for the proper administration of the Fund and shall also keep or cause to be kept proper accounts to show the income, expenditure, assets and liabilities of, and dealings in relation to, the Fund and any other records required under the Relevant Law.

### **9.2 Financial Accounts**

The Trustee shall, within the period (if any) specified under the Relevant Law, prepare or obtain, and lodge with the appropriate authority, all returns, accounts, statements, certificates and other records required under the Relevant Law and pay all fees due and payable in respect of same.

### **9.3 Auditor**

The Trustee shall appoint an Auditor of the Fund who shall have access to all accounts, records and other information relating to the Fund. The Trustee shall require the Auditor to:

- (a) audit the accounts and records of the Fund;
- (b) provide a report to the Trustee in accordance with the requirements of the Relevant Law; and
- (c) otherwise provide services to the Fund as specified by the Trustee.

The appointment of the Auditor shall be on such terms as the Trustee may determine, and the Trustee may remove the Auditor at any time and appoint another Auditor. The costs and disbursements of the Auditor shall be deducted by the Trustee from the Fund.

#### **9.4 Disclosure and Reporting Requirements**

The Trustee shall make a copy of the Deed and Rules available to Members at offices of the Trustee during normal business hours, and shall provide to each Member, former Member and Beneficiary the statements, reports and information to which he or she is entitled to under the Relevant Law in the manner, and in the circumstances, prescribed under the Relevant Law.

### **10. ADMINISTRATION**

#### **10.1 Appointment of Administrator and Advisers**

- (a) The Trustee may appoint a competent person or organisation, including a corporation associated with the Trustee, as administrator for the Fund or the Fund.
- (b) If necessary to perform functions which are required under the Relevant Law, or which the Trustee may consider desirable for the proper administration of the Fund, the Trustee may appoint investment managers, solicitors, counsel, brokers, agents, consultants or such other advisers as the Trustee considers to be appropriate.
- (c) The appointment of an administrator, expert or adviser shall be on such terms as the Trustee determines in its discretion and the costs and disbursements of such administrator, expert or adviser shall be deducted by the Trustee from the Fund.

#### **10.2 Charges and Expenses**

The Trustee shall be entitled to receive remuneration and to recover costs and expenses incurred in relation to its administration of, and performance of its duties in relation to, the Fund, as follows:

- (a) A contribution fee will be deducted by the Trustee from contributions to the Fund made pursuant to clause 4. The contribution fee will be at the rate notified by the Trustee to Members from time to time, or such other rate agreed between the Trustee and the Member.
- (b) A transfer fee will be deducted by the Trustee from amounts transferred to the Fund under Clause 11.1, unless the Trustee agrees to accept payment of the transfer fee by separate payment. The transfer fee will be at the rate notified by the Trustee to Members from time to time, or such other rate agreed between the Trustee and the Member.
- (c) An account keeping fee at the rate notified by the Trustee to Members is deducted monthly by the Trustee from the Member Credits of each Member.
- (d) The cost of providing Insured Benefits in respect of a Member will be deducted by the Trustee from the Member Credits of that Member.
- (e) The Trustee may debit the Member Contribution Accounts, Account Based Pension Accounts or Term Allocated Pension Accounts, with an additional service fee agreed with Members or Beneficiaries receiving Account Based Pensions or Term Allocated Pensions for additional services sought by the Member or Beneficiary, for example an account monitoring service. The Trustee shall, if it was so agreed with the Member or Beneficiary, pay the additional service fee (in whole or part) to an adviser nominated by the Member or Beneficiary.
- (f) The appointed insurer may deduct charges and expenses under the terms of the Life Insurance Policies in which the Fund is invested pursuant to clause 7.1.
- (g) All costs and expenses incurred in connection with the establishment, maintenance, administration and operation of the Fund may be deducted from the Fund.
- (h) All costs and expenses which the Trustee is entitled to deduct from the Fund pursuant to this Deed shall be deducted from the Member Contribution Accounts, the Account Based Pension Accounts and the Term Allocated Pension Accounts (as the case may be) on an equitable basis determined by the Trustee.
- (i) To avoid doubt:

- (i) the Trustee may, for such time as it determines, reduce or waive any fee payable to it under this Deed; and
- (ii) the Trustee may pay commission or other remuneration, from its own resources (including, without limitation, from fees payable to it under this Deed), to persons who arrange for amounts to be paid to the Fund, or persons who provide advice to Members or Beneficiaries receiving Account Based Pensions and/or Term Allocated Pension.
- (iii) All fees, charges and expenses referred to in this deed are, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis. To the extent that GST is payable in respect of any supply made under or in connection with this deed (unless it is expressly stated to include GST), the fee, charge or expense will be increased by an amount equal to the GST payable in respect of the supply.

## **11. TRANSFERS**

### ***11.1 Transfers from Other Funds***

- (a) Subject to the Relevant Law, the Trustee shall have the power at any time to arrange with the trustee or another responsible person of an Approved Benefit Arrangement to accept the transfer of a benefit or a Life Insurance Policy in respect of a Member to the Fund to be applied as provided in the Rules. To avoid doubt, but subject to the Relevant Law, the transfer may be from an Approved Benefit Arrangement of which the Member is a member or another person is a member and for the purposes of this paragraph the Trustee may admit a person to membership of the Fund without an application having been made by or on behalf of the person.
- (b) The Trustee may arrange with the trustee or another responsible person of an Approved Benefit Arrangement for a person to be transferred to the Fund if permitted by the Relevant Law. The Trustee may admit such a person as a Member of the Fund on such special terms and conditions as may be necessary to enable the Fund to be a “successor fund” for the purposes of the Relevant Law.

### ***11.2 Transfers to Other Funds***

- (a) Subject to the Relevant Law, the Trustee may, on the written request of a Member who:
  - (i) is entitled to receive a Benefit; or
  - (ii) wishes to transfer his or her Member Credits (in whole or in part); or
  - (iii) wishes to transfer his or her Life Insurance Policy or Insured Benefits;
 in accordance with the Member’s request transfer the Life Insurance Policy or Insured Benefits and/or apply all or part of the Member Credits to an Approved Benefit Arrangement. To avoid doubt, but subject to the Relevant Law, a transfer to an Approved Benefit Arrangement may be made for the benefit of the Member or another person.
- (b) The entitlements in the Fund of a Member in respect of whom a transfer is made under this clause shall be adjusted having regard to the transfers.

## **12. TAXATION AND GOVERNMENTAL CHARGES**

### ***12.1 Trustee’s Power to make Provision for Tax Liability***

The Trustee shall make adequate provision to meet the tax liability of the Fund in the manner the Trustee considers appropriate.

## **12.2 *Trustee's Power to Pay Tax and Governmental Charges***

The Trustee shall pay the tax, duties or other Governmental charges or imposts it is lawfully required to pay, whether in respect of contributions, other income of the Fund, or on Benefits or other payments out of the Fund, or in respect of the operation of the Fund generally.

## **12.3 *Deduction of Tax and Governmental Charges***

The Trustee shall deduct from the Fund, or from any Benefit or other payment made from the Fund, as appropriate, the amount of any tax, duty or other charge or impost it is lawfully required to pay.

## **12.4 *Trustee's Power to Transfer Tax Liability***

The Trustee may, to the extent permissible under the Tax Act, transfer the tax liability of the Fund or the Fund to an institution or organisation which consents to such transfer.

## **12.5 *No Accounting to Members***

Where the Trustee receives a tax deduction in respect of a premium it pays on a Life Insurance Policy it may offset the deduction against any tax payable on the relevant Member's contribution but, where no tax is payable on the Member's contribution, the Trustee shall not be required to account to the Member in any way whatsoever for the tax deduction received and the amount shall be applied in any way the Trustee determines, subject to the Relevant Law.

## **13. FORFEITURE OF ENTITLEMENTS**

### **13.1 *Conditions of Forfeiture***

A Member or Beneficiary shall forfeit all of his or her interest in the Fund or right to receive his or her Benefit to the extent such forfeiture in the circumstances prescribed under the Relevant Law. If, by virtue of this clause, a Member no longer has any interest in the Fund, or a right to receive his or her Benefit, then such Member shall cease to be a Member of the Fund and any Beneficiary who might otherwise be entitled shall forfeit all his or her interest in the Fund.

### **13.2 *Application of Forfeited Benefits***

Benefits forfeited pursuant to clause 13.1 shall be credited to the Foregone Benefits Account for the Fund.

## **14. LIEN OVER BENEFITS**

### **14.1 *Trustee's Lien***

Subject to the Relevant Law, the Trustee shall have a lien over the Benefit payable to or in respect of a Member to the extent of an identified debt owed by a Member to the Trustee as Trustee, of the Fund.

## **14.2 Deduction from Benefit**

The Trustee shall deduct the amount of the Trustee's lien from the Benefit.

## **15. LIMITS ON CONTRIBUTIONS & BENEFITS**

### **15.1 Contributions**

The Trustee shall only accept contributions which can be made to the Fund in accordance with the Relevant Law.

### **15.2 Benefits**

Notwithstanding anything in the Rules to the contrary, the Trustee shall ensure that any Benefit paid or payable from the Fund (together with any other relevant benefit which the Trustee is required to take into account) is limited to the extent necessary to ensure the Trustee and the Fund is not in breach of the Relevant Law, or any other legislation which limits the amount of any Benefit payable from the Fund. In order to give effect to this clause the Trustee has power:

- (a) to require the Member to provide details of any other relevant benefits which have been, are being, or may be provided for the Member or for Dependants of the Member;
- (b) to refuse to accept part or all of a contribution by or in respect of a Member;
- (c) to adjust the Benefit payable to or in respect of a Member.

If, pursuant to this clause, the Benefit payable to or in respect of a Member is reduced, the balance of the Benefit shall, subject to the Relevant Law, be credited to the Foregone Benefits Account.

## **16. VARIATION OF DEED AND RULES**

### **16.1 Method of Variation**

All or any of the provisions of the Deed and Rules (including this clause) may be varied (whether by way of addition, deletion or amendment) from time to time by the Trustee:

- (a) by written resolution of the Trustee; or
- (b) by deed executed by the Trustee;

to take effect from the date on which the resolution is made or the deed is executed or from such earlier or later date as the Trustee, specifies in the resolution or deed.

PROVIDED THAT no such variation shall alter the requirement of clause 3. 1(a) that the Trustee be a constitutional corporation (as that term is defined in the Relevant Law).

### **16.2 Advice to Members**

After the Rules or any of them have been varied, the Trustee may advise the Members of the Fund, of the nature and purpose of the variation, the effect (if any) on their entitlements, and any other matters required under the Relevant Law, in the manner provided under the Relevant Law.

### **16.3 Trustee's Right to Vary Limited**

The Trustee's right to vary the Rules is subject to the Relevant Law and is further limited to the extent that no variation shall have the effect of varying the main purpose of the Fund, or

- (a) reduce the amount of a Benefit (excluding any Insured Benefit), calculated on the basis of contributions to the Fund and earnings thereon that has accrued or become payable to a Member before the date of the proposed variation; or
- (b) reduce the amount of any other Benefit that is, or may become, payable to a Member in relation to the period before the date of the proposed variation;

unless the reduction is:

- (c) required because of, and does not exceed the value of, any tax payable on the income of the Fund; or
- (d) required to ensure the Fund complies with the Relevant Law; or
- (e) approved in writing by the Member in accordance with the Relevant Law; or
- (f) approved in writing by a Regulator.

## 17. LEGISLATIVE RESTRAINTS

For the purpose of removing any doubt:

- (a) any provision or requirement which must, under the Relevant Law, be incorporated in the Rules in order that the Fund meets the requirements of the Relevant Law and qualifies for the maximum income tax concessions available to superannuation funds, is deemed to be incorporated in the Rules PROVIDED THAT:
  - (i) any provision or requirement so incorporated shall only apply to the extent its application is necessary to meet the requirements of the Relevant Law and to ensure the Fund qualifies for income tax concessions; and
  - (ii) where there is an inconsistency between a provision or requirement of the Rules and to the extent it applies, any provision or requirement so incorporated, the latter shall prevail over the former; and
  - (iii) if a provision or requirement so incorporated is required, under the Relevant Law, to be amended, the provision or requirement in its amended form is deemed to be included in substitution for the previous provision or requirement from the date required under the Relevant Law;
- (b) despite anything contained in the Rules, the Trustee:
  - (i) shall take any action; and
  - (ii) shall refrain from taking any action;
 in order to comply with the Relevant Law;
- (c) where a provision of the Relevant Law states that the Trustee can undertake a certain act then the Trustee may undertake that act in accordance with that provision (and, for this purpose, an act includes an omission);
- (d) the Trustee shall not be in breach of the Rules or the trusts of the Fund if the Trustee fails to comply with a provision of the Relevant Law if the failure to comply is consented to by a Regulator or, notwithstanding the failure to comply, the Regulator issues a notice of satisfaction or compliance under the Relevant Law; and
- (e) if a provision of the Deed and Rules would be wholly or partially invalid because it:
  - (i) subjects the Trustee to direction by another person; or
  - (ii) permits a person to exercise a discretion without the consent of the Trustee;
 then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

## **18. NOTICES**

### **18.1 *Notice to Members***

Notices shall be properly given by the Trustee to Members and to former Members if:

- (a) handed to the Member personally; or
- (b) sent by prepaid post to the last known address or place of employment of the Member or former Member.

### **18.2 *Notice to Trustee***

Notices to the Trustee shall be properly given if:

- (a) handed to a responsible officer of the Trustee personally;
- (b) sent by pre-paid post addressed to the Trustee.

### **18.3 *Service by Post***

In the case of service by post, notice shall be deemed to have been effectively given on the third day after the day of posting.

## **19. WINDING UP**

### **19.1 *Winding up of the Trustee***

The Trustee may determine that the Fund shall be dissolved and determine the final balance date for the Fund (in this clause referred to as "**the Closure Date**"). All contributions to the Fund shall cease on the day immediately prior to the Closure Date and any arrears in contributions and other payments to the Fund due up to the Closure Date shall be paid forthwith. The Trustee shall promptly advise all Members of the Fund and notwithstanding any contrary provision in the Rules, no Benefits shall be paid from the Fund to or in respect of Members until after the Closure Date.

### **19.2 *Trustee's Expenses and Payment of Benefits***

On the Closure Date the Trustee shall, after providing for the payment of the costs and disbursements of administering and dissolving the Fund, any outstanding tax payable from the Fund and the repayment of any authorised borrowings of the Fund, adjust the value of the Member Contribution Accounts of each Member and in the case of a Beneficiary receiving one or more Account Based Pension and Term Allocated Pension, that Beneficiary's Account Based Pension Account(s) and Term Allocated Pension Account(s), on an equitable basis, such that the Fund is thereby fully allocated to such accounts. The Trustee shall then:

- (a) pay same to the Beneficiary entitled; or
- (b) transfer the Benefit in accordance with clause 11;

PROVIDED that the Trustee shall not pay a Benefit to or in respect of a Member other than in the circumstances acceptable under the Relevant Law.

### **19.3 *Power of Trustee in Winding Up***

The Trustee may do all things necessary or convenient for giving effect to clause 19.

## **20. RESOLUTION OF QUESTIONS OR DISPUTES**

Subject to the Relevant Law, if a question or dispute arises in regard to the Fund, the rights of Members, former Members or Beneficiaries, or the construction or meaning of any clause of the Deed or Rules, the Trustee may:

- (a) seek and act on the advice of a solicitor or barrister practising in the Supreme Court of any State or Territory of Australia; or
- (b) submit the matter to arbitration; or
- (c) settle the question or dispute and, to the extent permitted by law, the decision of the Trustee in such regard shall be final and binding and with power to commence, carry on, defend and settle any proceedings arising in respect of any such question or dispute. The costs of obtaining advice and/or expenses incurred in commencing such proceedings shall be recoverable from the Fund.



## **SCHEDULE**

### **ACCOUNTS (clause 5)**

#### ***A2.1 Member Contribution Account***

The Trustee shall establish a Member Contribution Account in respect of each Member of the Fund, to which the following amounts shall be credited or debited, as appropriate:

- (a) contributions to the Fund pursuant to clause 4.1;
- (b) contributions to the Fund by the Member that are remitted to the Fund by an employer or some other person on behalf of that Member;
- (c) that proportion of the assets received by the Trustee pursuant to clause 11.1 which was standing to the credit of the Member or the other person under another Approved Benefit Arrangement;
- (d) amounts debited to meet taxation liabilities pursuant to clause 12;
- (e) amounts debited or credited pursuant to clause A2.4;
- (f) charges and expenses deducted pursuant to clause 10.2 including, without limitation, premiums for Insured Benefits; and
- (g) amounts paid as Benefits or transfers to Approved Benefit Arrangements from the Fund.

#### ***A2.1A Special Member Contribution Account***

The Trustee may establish one or more Special Member Contribution Accounts in respect of a Member for the purpose of receiving contributions or rollovers or both specified in an application for an Account Based Pension or a Term Allocated Pension, to which the following amounts may be debited or credited:

- (a) contributions to the Fund under clause 4.1 received for the purpose of commencing an Account Based Pension for the Member;
- (b) amounts received by the Trustee under clause 11.1 for the purpose of commencing an Account Based Pension or a Term Allocated Pension for the Member;
- (c) any amounts debited to meet taxation liabilities under Section 12;
- (d) any amounts debited or credited under clause A2.4;
- (e) any amounts credited under clause A2.5; and
- (f) any charges and expenses deducted under clause 10.2.

The Trustee must transfer the balance of the Special Member Contribution Account of a Member to the Account Based Pension Account or the Term Allocated Pension Account, as appropriate, of the Member as soon as the Trustee considers appropriate in order that the pension may commence to be payable.

No Benefit can be paid or transferred from the Special Member Contribution Account of a Member prior to the balance of the Special Member Contribution Account being transferred to the Account Based Pension Account or the Term Allocated Pension Account, except in the case of the death of the Member, in which case the Benefit must be paid in accordance with clause 6.11.

### **A2.3 Pension Accounts**

If a Benefit is payable as an Account Based Pension or a Term Allocated Pension from the Fund pursuant to clause 6.11, the Trustee shall as applicable establish an Account Based Pension Account or a Term Allocated Pension Account in respect of the Beneficiary to which the following amounts shall be credited or debited, as appropriate:

- (a) amounts transferred from any of the other Member's Accounts of the Member (including the Special Member Contribution Account) and any other amounts which the Trustee decides to credit to the account and that are to be paid as an Account Based Pension or Term Allocated Pension;
- (b) amounts debited to meet taxation liabilities pursuant to clause 12;
- (c) amounts debited or credited pursuant to clause A2.4;
- (d) amounts credited pursuant to clause A2.5;
- (e) charges and expenses deducted pursuant to clause 10.2;
- (f) if the Beneficiary is a Protected Pensioner:
  - (i) amounts debited to pay premiums in respect of the Protected Pension so far as it relates to the Beneficiary;
  - (ii) amounts received by the Trustee under the Protected Pension Policy in respect of the Member;
- (g) regular income payments debited to pay the Beneficiary's Benefit; and
- (h) amounts paid as Benefits (other than regular income payments) or transfers to Approved Benefit Arrangements from the Fund.

A Beneficiary will become entitled to receive regular income payments from the Account Based Pension Account or Term Allocated Pension Account of the Beneficiary upon establishment of the Account Based Pension Account or Term Allocated Pension Account, as appropriate. However, the times at which income payments will be made (including the first income payment or any commutation of the pension after establishment of the relevant account) is determined in accordance with the Rules and is subject to the Relevant Law.

### **A2.4 Reserve Accounts**

- (a) If necessary or convenient for the management of the Fund, the Trustee shall establish a Reserve Account to which such amounts as the Trustee determines are credited from the Fund and from which such amounts as the Trustee determines are debited for the purposes of the Rules.
- (b) If necessary or convenient for the management of the Fund, the Trustee shall also establish a Taxation Reserve Account to which the Trustee shall credit amounts which, in the Trustee's opinion, are required to be set aside to meet the taxation liabilities of the Fund, including:
  - (i) income tax on contributions to the Fund;

- (ii) income tax on earnings of the Fund;
- (iii) income tax on Benefits payable or paid from the Fund;
- (iv) an allowance for capital gains tax which may be payable in respect of unrealised gains on assets of the Fund;
- (v) capital gains tax on realised assets of the Fund;
- (vi) any other taxes payable by the Trustee as may be required by a Regulator or other lawfully empowered taxing authority.

The Taxation Reserve Account shall be debited by the Trustee as required to pay tax, or to transfer to the Member's Accounts, Account Based Pension Accounts and Term Allocated Pension Accounts, on an equitable basis, amounts set aside to pay tax but which are no longer required for this purpose.

- (c) For the purposes of this clause but subject to the Relevant Law, the Trustee shall make allocations to, and deductions from, the Member Contribution Accounts, Account Based Pension Accounts and Term Allocated Pension Accounts on an equitable basis determined by the Trustee.

#### ***A2.5 Foregone Benefits Account***

The Trustee shall establish a Foregone Benefits Account for the Fund to which amounts are credited as provided in the Rules and which shall be applied, within the period (if any) specified under the Relevant Law, as follows:

- (a) if the Benefit of a Member has been forfeited and membership of the Fund terminated under clause 13.1, the Trustee may in its discretion, but only to the extent permitted under the Relevant Law, apply all or part of the Benefit forfeited for the benefit or maintenance of that former Member and/or any person who, in the opinion of the Trustee is dependent on the former Member for maintenance and support; or
- (b) in any one or more of the ways approved, either generally or in the specific instance, by a Regulator.

In the absence of such approved means of applying the proceeds of the Foregone Benefits Account, the Trustee shall apply the proceeds in any one or more of the following ways to the extent such application is not prohibited under the Relevant Law:

- (c) toward the provision of additional benefits for Members and/or their Dependants;
- (d) to pay any expenses of the Fund; or
- (e) to assist a Member, or Dependand, in the event of financial hardship, ill health, accident or other misfortune causing hardship.