

Working copy
Telstra Superannuation Scheme
(TelstraSuper)

Trust Deed

Telstra Group Limited
(ABN 56 650 620 303)

and

Telstra Super Pty Ltd
(ABN 86 007 422 522)

THIS AMENDING DEED is made on 6 September 2023 by:

1. **TELSTRA GROUP LIMITED**, ABN 56 650 620 303, of Level 41, 242 Exhibition Street, Melbourne, Victoria (**Principal Employer**); and
2. **TELSTRA SUPER PTY LTD**, ABN 86 007 422 522, of Level 10, 130 Lonsdale Street, Melbourne, Victoria (**Trustee**).

RECITALS

- A.** The indefinitely continuing superannuation fund known as the **TELSTRA SUPERANNUATION SCHEME (Fund)** was established by a trust deed dated 13 June 1990. That trust deed, as subsequently amended by amending deeds dated 21 July 1994, 25 May 1995, 1 March 1996, 1 July 1996, 1 July 1997, 15 April 1999, 1 May 2001, 5 June 2001, 29 April 2002, 30 January 2003, 21 April 2004, 1 February 2005, 2 September 2005, 18 December 2006, 29 June 2007, 29 August 2007, 24 June 2008, 13 March 2009, 16 July 2013 and 23 December 2021 is referred to in this deed as the “**Trust Deed**”.
- B.** Part 1.25 of the Trust Deed presently reads as follows:

“1.25.1 Amendments to comply with Relevant Law.

Subject to clause 1.25.3, the Principal Employer and the Trustee may by deed or by oral or written resolution (including in either case a resolution of its Board) amend, add to, revoke or replace all or any of the trusts and provisions of this Deed (including without limitation this part 1.25) in order to comply with any applicable requirement of a Relevant Law.

1.25.2 Other amendments.

Subject to clause 1.25.3, the Principal Employer by deed or by oral or written resolution (including without limitation a resolution of the Board) may amend, add to, revoke or replace all or any of the trusts and provisions of this Deed (including without limitation this part 1.25) as the Principal Employer sees fit but no such amendment, addition, revocation or replacement (collectively called an “amendment”) shall -

- (a) in the case of an amendment to which the consent of the Trustee is required under a Relevant Law, be made without the consent of the Trustee; and
- (b) in any case, take effect in respect of a Member or Beneficiary unless -
 - (1) the Actuary certifies that that amendment will not reduce the amount of any benefit presently or prospectively payable in respect of the Member or Beneficiary to the extent that that benefit has accrued in respect of the period up to the date the relevant deed is executed or the relevant resolution is made;
 - (2) that amendment is approved in writing by the Regulator; or

- (3) that amendment is approved in writing by that Member or Beneficiary,

and, for the avoidance of doubt, it is expressly provided that the trusts and provisions of this Deed may be entirely replaced by amendments made in accordance with this clause 1.25.2.

1.25.3 Restrictions on amendments.

- (a) **Requirements of Supervision Act.** The Supervision Act contains conditions concerning the amendment of the governing rules of superannuation schemes, which must be complied with when making amendments under this part 1.25. In particular, no amendment may be made under this part 1.25 which is prohibited under the Supervision Act.
- (b) **Requirement to consult with Union Council.** Before exercising any Power exercisable by the Principal Employer under clause 1.25.2, the Principal Employer will consult with the Union Council with a view to reaching agreement.
- (c) **Division 5.** In the case of:
 - (1) a Member who is for the time being categorised as a member of division 5 of this Deed; and
 - (2) any other person entitled to claim in respect of that Member,(each called a “Protected Person”), no amendment, addition, revocation or replacement may be made under clause 1.25.2 which would:
 - (3) alter adversely a Protected Person’s right to claim or receive a benefit, or the manner of calculation of a benefit, under the provisions of division 5 of this Deed in force on the date the member of division 5 was last categorised as a member of division 5;
 - (4) alter clause 5.1.1(c); or
 - (5) increase the obligation of the member of division 5 to contribute to the Fund,

unless the Trustee consents to that amendment, addition, revocation or replacement.

1.25.4 Effective date of amendments.

Any amendment, addition, revocation or replacement made in accordance with this part 1.25 takes effect on the effective date specified in the relevant deed or resolution or, if no date is so specified, the date of that deed or resolution.”

TRUST DEED

- C. The Trustee and the Principal Employer wish to amend the Trust Deed in the manner provided in this deed and the Actuary appointed for the purpose in accordance with the Trust Deed has certified in respect of the amendments in accordance with clause 1.25.2(b)(1) of the Trust Deed (as evidenced by the certificate annexed to this deed). The Trustee joins in the deed to evidence its consent to any amendment where its consent might be necessary. The Principal Employer is satisfied that the amendments made by this deed are permitted under the *Supervision Industry (Supervision) Act 1993* (Cth) and that the requirement concerning consultation with the Union Council has been met.

THIS DEED WITNESSES that -

1. Interpretation

Except to the extent it is given a special meaning in this amending deed, any word or expression which has a particular meaning in the Trust Deed must, when used in this amending deed, be given the same meaning as it has in the Trust Deed.

2. Amendment of Trust Deed

With effect on and from a date or dates to be determined by the Trustee (with the Principal Employer's agreement), the Principal Employer and the Trustee amend the Trust Deed by adding to, revoking and replacing the existing provisions of the Trust Deed to the extent necessary for those provisions to correspond with the new provisions contained in the Appendix to this amending deed.

APPENDIX

This is the Appendix referred to in the amending deed to which this Appendix is annexed and contains the amended Trust Deed governing the Fund. The table of contents contained in this Appendix is for information purposes only and does not comprise part of the Trust Deed.

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**DIVISION 1
GENERAL PROVISIONS**

**Part 1.1
Definitions and Interpretation**

1.1.1 Definitions.

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

“Accrued Retirement Benefit” means for purposes of part 1.9 and part 1.13 -

- (a) with respect to a division 2 member, has the meaning given to it in clause 2.1.2; and
- (b) with respect to a division 5 member, the sum of the benefits under clauses 5.6.1(a), (b), (c), (f) and (g).

“Accumulation Member” means a Member who does not have a defined benefit interest in the Fund (where “defined benefit interest” has the same meaning as in the Supervision Regulations).

“Actuary” means for any particular purpose under this Deed the person appointed by the Trustee from time to time, either generally or for that particular purpose, being -

- (a) a Fellow or Accredited Member of the Institute of Actuaries of Australia (or of any body which succeeds that Institute) or any other person recognised by that body or its successor as being qualified to provide actuarial advice and reports in relation to a superannuation fund (a “qualified actuary”);
- (b) a partnership, one of the members of which is a qualified actuary; or
- (c) a body corporate which employs or engages a qualified actuary for the purpose of providing actuarial advice.

“Aggregate Account Balance” in respect of a particular Member or Beneficiary of the Fund at any particular time means the sum of the credit balances (if any) of all accumulation accounts held by the Trustee in respect of that Member, after all relevant credits and debits have been made to those accounts.

“Approved Benefit Arrangement” means a fund or benefit arrangement other than the Fund (including without limitation a superannuation fund, an approved deposit fund, a deferred annuity and an eligible rollover fund), being a fund or benefit arrangement to which money or property may be paid or transferred from the Fund, or from which money or property may be received into the Fund, without causing the Fund to cease to be a complying superannuation fund for the purposes of the Tax Act.

“Associated Employer” means a person admitted to participation in the Fund as an Associated Employer in accordance with part 1.10, including without limitation a person who replaces or succeeds an Associated Employer as provided in part 1.11 but not including a person who has ceased to participate in the Fund as an Associated Employer as provided in part 1.11.

“Beneficiary” means a Member or other person who is for the time being beneficially entitled to receive, or is receiving, a benefit from the Fund in accordance with this Deed.

“Binding Death Benefit Nomination” means a written notice given to the Trustee by a Member which:

- (a) is in a form approved by the Trustee and meets any requirements determined by the Trustee;
- (b) nominates one or more of the Member's Dependants or legal personal representative to receive a death benefit in respect of the Member and the proportions in which the death benefit is to be paid if more than one person is so nominated; and
- (c) complies with and is given in accordance with the relevant conditions and requirements set out in the Supervision Regulations applicable to a notice given under section 59(1A) of the Supervision Act.

"Board" means in relation to the Principal Employer or the Trustee, as the case may be, a quorum of its directors acting in accordance with its Constitution.

"Casual Employee" means an Employee who is for the time being classified by the Employer as a casual employee in accordance with the Employer's normal workforce classification rules and procedures and who the Employer notifies to the Trustee.

"Commonwealth Superannuation Scheme" means the benefit scheme maintained under the *Superannuation Act 1976* for (but not limited to) employees of the Commonwealth of Australia.

"Complying Pension" has the meaning given in clause 4.1.2.

"Complying Pensioner" means a Member who is receiving a Complying Pension under part 4.6.

"Constitution" has the same meaning as in the Corporations Act.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Credited CSS Service" means in relation to a Former CSS Member the sum of -

- (a) the period which, immediately prior to the date the Member became a Member of the Fund, counted for the purpose of determining benefits to be provided in respect of the Member under the Commonwealth Superannuation Scheme, as notified to the Trustee by the Principal Employer; and
- (b) subject to part 1.2 and clause 1.16.5, any additional period which the Principal Employer deems to be Credited CSS Service either generally or in any particular case for the purposes of the whole or any particular provision of this Deed.

"Declared Rate" means the rate of investment earnings (which may be positive or negative and may be reflected as a variation in Unit Price) determined by the Trustee after having regard to the income of the Fund or of any particular investment portfolio within the Fund, in respect of any period for the purposes of the whole or any particular provision of this Deed and without limiting the preceding words but subject to any conditions determined by the Trustee, for the purposes of the whole or any particular provision of this Deed -

- (a) a Declared Rate may be prospectively determined on an interim basis in respect of a particular period; and
- (b) a Declared Rate may be subsequently determined on a final or declared basis in respect of that period.

"Deed" means this Trust Deed, including the recitals, the divisions and anything deemed to be included for the time being under clause 1.2.4, as amended, added to, revoked or replaced from time to time in accordance with this Deed.

“Dependant” means in relation to a person any other person who, in the opinion of the Trustee, satisfies the definition of “dependant” under the Supervision Act.

“Division 4 Employer” means an employer who is not an Associated Employer but is approved by the Trustee upon such terms and conditions as it may determine for the purpose of making contributions in respect of an Eligible Person or an Eligible Member.

“Division 2 Membership” means, subject to clause 2.1.3, in relation to a Member the sum of -

- (a) the most recent uninterrupted period prior to 1 July 1996 during which the Member was an Employed Member and a Member of the Fund; and
- (b) the most recent uninterrupted period after 30 June 1996 during which the Member has been an Employed Member and a member of division 2; and
- (c) subject to clause 1.16.5, any additional period which the Principal Employer may deem to be Division 2 Membership either generally or in any particular case for the purposes of the whole or any particular provision of this Deed.

“Division 5 Membership” means, subject to clause 5.1.3, in relation to a Member the sum of -

- (a) the most recent uninterrupted period during which the Member has been an Employed Member and a member of division 5; and
- (b) subject to clause 1.16.5, any additional period which the Principal Employer may deem to be Division 5 Membership either generally or in any particular case for the purposes of the whole or any particular provision of this Deed.

“Eligible Employee” means -

- (a) an Employee who the Principal Employer notifies the Trustee is for the time being eligible for membership of the Fund; and
- (b) an Employee who falls within a class of Employees who the Principal Employer notifies the Trustee is for the time being eligible for membership of the Fund.

“Eligible Person” means a person who is eligible to become a Member of the Fund in accordance with the Relevant Law and the Trustee’s policies as determined from time to time, but does not include an Eligible Employee.

“Eligible Spouse” means a person who is, at the time contributions in respect of the person are made by another person, the Spouse of the other person.

“Employed Member” means a person who is for the time being both an Employee and a Member.

“Employed Pay Period” means in relation to a Member a Pay Period which includes Employment.

“Employee” has, in relation to an Employer or a Division 4 Employer, the same meaning as in the Supervision Act.

“Employer” means the Principal Employer and an Associated Employer and, in relation to an Employee, means the Employer or Employers by which the Employee is for the time being an Employee, or, in relation to a former Employee, means the Employer or Employers by which the former Employee was last an Employee.

“Employment” means in relation to a Member -

- (a) a period when the Member is actively at work with the Employer;
- (b) a period of temporary absence from active work with the approval of the Employer; and
- (c) any additional period which the Principal Employer may deem to be Employment either generally or in any particular case for the purposes of the whole or any particular provision of this Deed.

“Entitled Person” means a living natural person other than -

- (a) subject to section 302A of the *Bankruptcy Act 1966* (Cth) -
 - (1) a person who is bankrupt or insolvent or whose affairs are subject to official management; or
 - (2) a person in respect of whom (other than with the approval of the Trustee or as otherwise provided for under this Deed) anything has occurred or any circumstance exists which would deprive the person of absolute legal and beneficial ownership of the whole or any part of a benefit under this Deed;
- or
- (b) a person who has failed to comply with clause 1.20.6(a) to the satisfaction of the Trustee.

“Equitable Share” means in relation to a Member or a Beneficiary as at any particular date the amount determined by the Trustee, after obtaining the advice of the Actuary, to be that person’s equitable share of the Fund, as if the Fund was terminated and entirely apportioned between the Members and Beneficiaries as at that date.

“Former CSS Member” means a Member who -

- (a) participated in the Commonwealth Superannuation Scheme immediately before last becoming a Member of the Fund;
- (b) applies to become a Member of the Fund by written notice received by the Employer in a form agreed between the Principal Employer and the Trustee not later than 1 October 1990 or any later date agreed between the Principal Employer and the Trustee from time to time either generally or in any particular case; and
- (c) is not entitled to a benefit under the Commonwealth Superannuation Scheme.

“Fund” means the **Telstra Superannuation Scheme**, previously known as the Telecom Superannuation Scheme, established and maintained under this Deed and comprising the moneys and property held by and for the Trustee upon the trusts of this Deed.

“Fund Expenses” means the costs and expenses of and incidental to the establishment, operation, management, administration and investment of the Fund.

“Fund Interest” means in relation to a Member or Beneficiary as at any particular date the lesser of -

- (a) the value, as determined by the Actuary, of the benefits presently and prospectively payable from the Fund to and in respect of that person to the extent that those benefits have accrued under this Deed in respect of the period up to that date; and

(b) that person's Equitable Share.

"Gainful Employment" means employment for earnings, including business income, bonuses, commissions, fees, gratuities, salary and wages.

"Group Life Insurance" means insurance held by the Trustee in respect of a Beneficiary (on a group or individual basis).

"Insurance Benefit" in respect of a Member means an amount payable under a policy of Group Life Insurance upon the death, disability or terminal illness (as applicable) of a Member, in circumstances where the Trustee had made insurance cover for the benefit available and the Member had elected to be covered (or was otherwise automatically covered) for the benefit, subject to clause 1.9.2.

"Insurer" means a person from whom insurance is sought or with whom insurance is effected by the Trustee pursuant to this Deed.

"Investment Manager" means a body corporate appointed for the time being as an Investment Manager.

"Investment Option" means an investment option established by the Trustee in respect of an asset or assets of the Fund to which a discrete investment strategy applies.

"Member" means a person admitted to membership of the Fund in accordance with this Deed and a person ceases to be a Member in the event of that person's death or when all benefits to which that person could become entitled under this Deed have been paid from the Fund or have otherwise ceased or been terminated in accordance with this Deed, whichever first occurs.

"MySuper Commencement Date" means the date on or after 1 July 2013 from which the Fund's MySuper Product was made available to Members.

"MySuper Member" means a Member of a MySuper Product.

"MySuper Product" means has the same meaning as "MySuper product" under the Supervision Act.

"Nominated Beneficiary" means, with respect to a Member, one or more Dependants or the legal personal representative nominated on the Member's last effective:

- (a) Binding Death Benefit Nomination; or
- (b) Non-lapsing Binding Death Benefit Nomination.

Non-lapsing Binding Death Benefit Nomination means a written notice given to the Trustee by a Member which:

- (a) is in a form approved by the Trustee;
- (b) meets any requirements for validity as determined by the Trustee (which may include requirements relating to Trustee consent to the notice), whether such requirements arise at the time of giving the notice or at any later time;
- (c) nominates one or more of the Member's Dependants or legal personal representative to receive a death benefit in respect of the Member and the proportions in which the death benefit is to be paid if more than one person is so nominated;
- (d) is not a Binding Death Benefit Nomination; and

- (e) is intended by the Member to require the Trustee to pay a death benefit in respect of the Member in accordance with the notice.

“Pay Period” means a period in respect of which Employees’ periodic salaries or wages are normally determined in accordance with the Employer’s normal payroll system.

“Pensioner” means, as applicable, an Account Based Pensioner, Allocated Pensioner, Term Allocated Pensioner or a Complying Pensioner (each as defined in Division 4).

“Personal Member” means a Member who is categorised by the Trustee as a Personal Member under clause 4.1.4.

“Power” means a power, right, discretion or authority of any nature and howsoever arising (including without limitation a power which a person has a duty to exercise and a power of approval) and, wherever a Power is exercisable by a person, the relevant provision of this Deed must be read as if the words “at any time and from time to time” were added to that provision.

“Principal Employer” means -

- (a) Telstra Group Limited; or
- (b) any other person which has become the Principal Employer in accordance with part 1.11 or part 1.12.

“Qualified Adviser” means -

- (a) an accountant, barrister, solicitor, actuary, medical practitioner or other professional person;
- (b) an Insurer; and
- (c) any other person considered by the Trustee in good faith to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise.

“Regulator” means, as the context requires, the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission or any other like body.

“Relevant Law” means -

- (a) the Supervision Act and the Supervision Regulations;
- (b) the Corporations Act;
- (c) the Tax Act;
- (d) the SG Act;
- (e) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which applies to the Fund, this Deed, the Trustee or an Employer with the force of law; and
- (f) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which does not fall within paragraph (a), (b), (c), (d) or (e) of this definition but which the Trustee may determine from time to time to be a Relevant Law for the purposes of the whole or any particular provisions of this Deed,

and “requirement” and “applicable requirement”, when used in relation to a Relevant Law, means a requirement of, or a standard laid down under, the Relevant Law which must be complied with or satisfied in order to secure or better secure a concession in respect of Tax, or to avoid a relevant penalty, detriment or disadvantage, in connection with the Fund.

“**SG Act**” means the *Superannuation Guarantee (Administration) Act 1992* (Cth).

“**Spouse**” has the same meaning as in the Supervision Act.

“**Successor Fund**” has the same meaning as in the Supervision Regulations.

“**Successor Fund Transfer**” means, as the context requires, the transfer of a person’s superannuation benefits:

- (a) into the Fund from another Approved Benefit Arrangement, where the Fund is a Successor Fund or
- (b) out of the Fund to another Approved Benefit Arrangement, where the other Approved Benefit Arrangement is a Successor Fund.

“**Superannuation Membership**” means in relation to a Member:

- (a) subject to paragraph (c), who was a Member immediately before 1 July 1996, the sum of -
 - (1) the most recent uninterrupted period during which the Member has been an Employed Member and a Member of the Fund; and
 - (2) for a Member who was also a member of the Telstra Productivity Superannuation Scheme immediately before 1 July 1996, the period of that Member’s “Employed Membership” under the governing rules of that Scheme at 30 June 1996, except any period of concurrent membership of the Fund and the Scheme will count only under paragraph (1) above; and
 - (3) in the case of a Former CSS Member, the Member’s Credited CSS Service; and
 - (4) subject to part 1.2 and clause 1.16.5, any further period which the Principal Employer may deem to be Superannuation Membership either generally or in any particular case for the purposes of the whole or any particular provision of this Deed,or
- (b) subject to paragraph (c), who first becomes a Member on or after 1 July 1996, the sum of -
 - (1) the most recent uninterrupted period during which the Member has been an Employed Member and a Member of the Fund; and
 - (2) for a Member who was a member of the Telstra Productivity Superannuation Scheme immediately before 1 July 1996, the period of the Member’s “Employed Membership” under the governing rules of that Scheme at 30 June 1996; and
 - (3) for a Member who was a member of the Telstra Superannuation Scheme No. 1 immediately before 1 July 1997, the period of the Member’s “Fund Membership” including any applicable “Previous Fund Membership” under the governing rules of that Scheme at 30 June 1997; and

- (c) subject to part 1.2 and clause 1.16.5, any additional period which the Principal Employer may deem to be Superannuation Membership either generally or in any particular case for the purposes of the whole or any particular provision of this Deed,

where the period will be expressed in years (and any fraction of a year not forming part of a complete year).

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

“**Supervision Regulations**” means the *Superannuation Industry (Supervision) Regulations 1994*.

“**Tax**” means a governmental impost (including without limitation a tax, duty or levy) which is or might become payable in connection with the Fund, income of the Fund, payment or transfer of money or property to or from the Fund, this Deed or anything done or which may be done under this Deed, including any surcharge, duty or levy payable in respect of a Member that must be paid or collected by the Trustee or the Fund.

“**Tax Act**” means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, as the context requires (as amended or replaced from time to time).

“**Trustee**” means the Trustee for the time being of the Fund whether original or substituted.

“**Union Council**” means the body presently known as the Australian Council of Trade Unions and includes any body formed as a result of a reorganisation or amalgamation of that Council.

“**Unit**” means a part or share of an investment portfolio created by the Trustee under clause 1.8.6.

“**Unit Class**” means a class of Units referable to a particular investment portfolio.

“**Unit Price**” means the applicable price of a Unit as determined by the Trustee under clause 1.8.6.

“**Work**” means engagement in any business, trade, profession, vocation, calling, occupation or employment.

1.1.2 Interpretation.

- (a) In this Deed, unless the contrary intention appears or the context requires otherwise:
- (1) **conflicts within Deed:** if there is a conflict between this division 1 and any provision of this Deed not within this division 1, this division 1 prevails;
 - (2) **headings, underlinings and indexes:** headings, underlinings and indexes are for convenience only and do not affect the interpretation of this Deed;
 - (3) **singular, plural and genders:** words importing the singular include the plural and vice versa and words importing a gender include any gender;
 - (4) **statutory enactments:** a reference to a law or a provision of a law (including a word, phrase or term as defined) (a “specified law”) includes -
 - (A) the specified law as amended or re-enacted;
 - (B) any other law to the extent it consolidates or replaces the specified law, whether or not passed or approved by the same legislative body or other

authority and whether or not incorporating or adopting a law previously in force; and

- (C) any other law (and any enforceable determination or ruling) made or laid down in accordance with the specified law,

where “law” means a statute, regulation, proclamation, ordinance, statutory rule or by-law;

- (5) **amended provisions:** a reference to a division, part, clause or other provision of this Deed is a reference to that division, part, clause or provision as amended, added to, revoked or replaced from time to time;
- (6) **insurance:** a reference to insurance includes assurance and vice versa and any type of annuity;
- (7) **person:** a word or an expression importing a natural person includes a body corporate and any other person recognised at law, a partnership and any other group or association of persons but the words “natural person” have their normal meaning;
- (8) **disputes:** without affecting the jurisdiction of any competent court or tribunal, if a dispute or doubt arises as to the interpretation of this Deed or the rights or obligations of a person under this Deed, the decision of the Trustee is binding on all interested persons;
- (9) **defined terms:** while for convenience a particular word or group of words defined in this Deed may commence with capital or lower case letters, failure to use capital or lower case letters in that word or group of words elsewhere in this Deed does not of itself mean that that word or group of words has a meaning different from the meaning given in the relevant definition;
- (10) **approvals:** a reference to a power of approval includes a power to withhold or revoke approval and any appointment to an office or position under this Deed, and any conduct under this Deed, which requires the continued approval of the Trustee or (subject to part 1.2) the Principal Employer or an Associated Employer must cease on revocation of that approval;
- (11) **agreements:** where this Deed provides that the Trustee and the Principal Employer may agree to the Trustee taking a particular action, then (subject to part 1.2) the Trustee only has Power to take that action after such an agreement is reached and while it remains in force; and
- (12) **Trustee Acts:** to the extent legally possible and unless the Trustee otherwise determines, this Deed is not subject to the *Trustee Act 1958* (Vic) or any of its equivalents in any of the States or Territories of Australia.
- (b) This Deed is governed by and takes effect and must be construed in accordance with the laws of the State of Victoria or of any other State or Territory of Australia agreed between the Trustee and the Principal Employer.

Part 1.2
Compliance with Relevant Law

1.2.1 Overriding effect of this part.

Notwithstanding anything expressed or implied to the contrary in this Deed (including any other provision of this Deed which purports to prevail over this part 1.2) -

- (a) if there is a conflict between this part 1.2 and any other provision of this Deed, this part 1.2 prevails to the extent of the conflict; and
- (b) all other provisions of this Deed are equally subject to this part 1.2, notwithstanding that some provisions may expressly refer to this part (or any clause in this part) while others do not.

1.2.2 Compliance with Relevant Law.

The Trustee has all of the Powers necessary to comply with a Relevant Law and the Trustee -

- (a) must do, or cause to be done, any matter or thing necessary in order to satisfy any applicable requirement of a Relevant Law;
- (b) must refrain from doing, and take all reasonable steps to prevent an Employer, a Member or a Beneficiary doing, any matter or thing which would cause the Trustee to breach or be in non-compliance with any applicable requirement of a Relevant Law; and
- (c) may (but is not obliged to) act in accordance with a provision of a Relevant Law that is not a requirement of a Relevant Law.

1.2.3 MySuper product.

- (a) If the Trustee is authorised and decides to offer a MySuper Product, any condition, standard or requirement of the Relevant Law which must be satisfied in relation to a MySuper Product is deemed to be included in the Deed.
- (b) Subject to clause 1.2.3(c), a MySuper Product offered by the Trustee must have the following characteristics that are specified by section 29TC(1) of the Supervision Act:
 - (1) a single diversified investment strategy is to be adopted in relation to assets of the fund, to the extent that they are attributed to that class of beneficial interest in the fund;
 - (2) all members who hold a beneficial interest of that class in the fund are entitled to access the same options, benefits and facilities except to the extent that a benefit is provided by taking out risk insurance;
 - (3) amounts are attributed to members in relation to their beneficial interest of that class in the fund in a way that does not stream gains or losses that relate to any assets of the fund to only some of those members, except to the extent permitted under a lifecycle exception (under section 29TC(2) of the Supervision Act);
 - (4) the same process is to be adopted in attributing amounts to members in relation to their beneficial interest of that class in the fund, except to the extent that a different process is necessary to allow for fee subsidisation by employers or to comply with section 99G of the Supervision Act (fee cap on low balances);

- (5) if fee subsidisation by employers is permitted, that subsidisation does not favour one member who holds a beneficial interest of that class in the fund and is an employee of a subsidising employer over another such member who is an employee of that employer;
 - (6) the only limitations imposed on the source or kind of contributions made by or on behalf of persons who hold a beneficial interest of that class in the fund are those permitted under section 29TC(3) of the Supervision Act;
 - (7) a beneficial interest of that class in the fund cannot be replaced with a beneficial interest of another class in the fund, unless:
 - (A) the person who holds the interest consents in writing to that replacement no more than 30 days before it occurs; or
 - (B) the person who holds the interest has died and the interest is replaced with a beneficial interest of another class in the fund of a kind, and in the circumstances, prescribed by the regulations;
 - (8) a beneficial interest of that class in the fund (the old interest) cannot be replaced with a beneficial interest (the new interest) in another superannuation entity unless:
 - (A) the replacement is permitted, or is required, under a law of the Commonwealth; or
 - (B) the person who holds the old interest consents in writing to the replacement with the new interest no more than 30 days before it occurs;
 - (9) to the extent that assets of the fund are attributed to beneficial interests of that class, a pension is not payable out of those assets by the trustee, or trustees, of the fund on the satisfaction of a condition of release of benefits specified in a standard made under section 31(2)(h) of the Supervision Act by a person who holds a beneficial interest of that class, unless the payment is derived from a benefit of the kind mentioned in section 62(1)(b)(ii) of the Supervision Act provided to the fund by an insurer;
 - (10) no member who holds a beneficial interest of that class in the fund is precluded from holding a beneficial interest of another class in the fund because of that fact; and
 - (11) no member is precluded from holding a beneficial interest of that class in the fund because the member holds a beneficial interest of another class in the fund.
- (c) If the Supervision Act is amended so that the characteristics of a MySuper product specified in section 29TC(1) (or any other section of the Supervision Act after any relevant amendments) (**amended MySuper characteristics**) are different from the characteristics listed in clause 1.2.3(b), the MySuper Product characteristics listed in clause 1.2.3(b) are taken to be amended so that the list is equivalent to and accords with the amended MySuper characteristics.

1.2.4 Deemed inclusion of certain Relevant Laws.

- (a) Any provision or requirement of a Relevant Law that is expressly required by a Relevant Law to be included in this Deed in order to comply with or satisfy a Relevant Law is

deemed to be included as from the date when it must be included for that purpose (or any earlier date agreed between the Trustee and the Principal Employer) but such a provision ceases to be so included when that express requirement ceases to apply.

- (b) If a provision of the Relevant Law states that the Trustee can or may (but is not obliged to) do something or act in some way that accords with the Relevant Law, but requires the Deed to include a particular provision in order for the Trustee to do so, the required provision is deemed to be included in the Deed for as long as the Trustee wishes to do that thing or so act.

1.2.5 Reading down and severance.

- (a) **Read down to avoid invalidity.** If a provision of this Deed is void or voidable or unenforceable or illegal, but would not be void or voidable or unenforceable or illegal if it were read down and it is capable of being read down, it shall be read down accordingly.
- (b) **Severance.** If, notwithstanding clause 1.2.5(a), a provision of this Deed is void or voidable or unenforceable or illegal and the provision would not be void or voidable or unenforceable or illegal if a word or words or the whole provision (as the case may be) were omitted, that word or those words or the whole provision (as the case may be) is or are hereby severed and the remainder of this Deed shall have full force and effect.

1.2.6 Certain directions not permitted.

No person is permitted to engage in conduct which, but for this clause 1.2.6, would render the Trustee subject, in the exercise of any of the Trustee's Powers under this Deed, to direction by that person in terms of and to an extent not permitted under the Relevant Law (where "engage in conduct" includes refusing or failing to do an act or exercise a Power), and any provision of this Deed which contemplates a person engaging in such conduct must be construed as only permitting that person to engage in such conduct with the approval of the Trustee.

1.2.7 Trustee must consent to certain discretions.

To the extent that the exercise of, or the ability to exercise, a Power under this Deed by a person other than the Trustee without the consent of the Trustee would, but for this clause 1.2.7, render a provision of this Deed void or invalid under the Relevant Law, then that other person may only exercise that Power with the consent of the Trustee.

1.2.8 Resolution of relevant doubts, disputes and conflicts.

If a doubt or dispute arises as to the meaning or effect of an applicable requirement of a Relevant Law, or there is a conflict between applicable requirements of Relevant Laws, the Trustee may resolve that doubt, dispute or conflict in the manner the Trustee considers appropriate.

1.2.9 Fair Work Commission and MySuper Product.

Before making an application under the *Fair Work Act 2009* to the Fair Work Commission in relation to any MySuper Product, the Trustee must first obtain the written approval of the Principal Employer.

Part 1.3 Trustee of Fund

1.3.1 Trustee must be a constitutional corporation.

The sole Trustee of the Fund for the time being must be a corporation that is a constitutional corporation (in terms of the Supervision Act) and which is appointed, or deemed to be appointed, by the Principal Employer, after consulting the Union Council. The appointment, removal and proceedings of directors of a Trustee (including without limitation the appointment of an additional independent director) shall occur in accordance with the Trustee's Constitution.

1.3.2 Period of office.

Subject to clause 1.3.3, a Trustee holds office until the earliest to occur of -

- (a) the Trustee resigning as Trustee by at least 90 days (or any lesser period agreed between the Trustee and the Principal Employer) prior written notice given to the Principal Employer;
- (b) the Trustee resigning as Trustee by written notice given to the Principal Employer because it is no longer permitted to act as Trustee under the Relevant Law;
- (c) the Trustee being removed from office under the Relevant Law; and
- (d) the Trustee being removed from office by the Principal Employer after consulting the Union Council,

and, subject to this part 1.3, the Principal Employer (after consulting the Union Council) shall forthwith appoint another Trustee.

1.3.3 Suspension from office.

During any period when a Trustee is suspended from office under the Relevant Law, the Trustee for the time being shall be the acting Trustee appointed under the Relevant Law in respect of the suspension period.

1.3.4 Compliance with Relevant Law.

The Principal Employer and the Trustee must take all actions necessary to ensure that the Trustee is constituted and governed in compliance with any applicable requirement of a Relevant Law regarding the trusteeship of superannuation funds, including without limitation appropriate action in respect of the Constitution or other constituent or governing document of the Trustee and the appointment and composition of the directors or other governing body of the Trustee.

Part 1.4 Powers of Trustee

1.4.1 Absolute discretions.

Except to the extent otherwise expressly provided in this Deed, the Trustee has in the exercise or non-exercise or partial exercise of each Power exercisable by the Trustee an absolute and uncontrolled discretion and is not bound to give any person a reason for or explanation of the exercise, non-exercise or partial exercise of that Power. The Powers conferred on the Trustee by this Deed are additional to and not in substitution for the Powers exercisable by the Trustee at law.

1.4.2 Powers of Trustee.

Except to the extent expressly provided otherwise elsewhere in this Deed, the Trustee has complete management and control of all proceedings, matters and things in connection with the Fund and may do all acts and things which the Trustee may consider necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise of the Powers and the performance of the duties of the Trustee, including without limitation the following specific powers, namely -

- (a) **servants, agents, representatives and service providers:** to appoint servants, agents, representatives and service providers (including administrators, investment managers and custodians) upon conditions determined by the Trustee, including without limitation conditions as to Powers, duties and remuneration from the Fund, and to revoke or vary an appointment;
- (b) **legal proceedings:** to institute, conduct, defend, compound, settle or abandon legal proceedings by or against the Trustee or the Fund or otherwise concerning the Fund or this Deed and also to compound and allow time for payment or satisfaction of a debt due to the Fund and of a claim or demand by or against the Trustee or the Fund;
- (c) **receipts, releases and discharges:** to make and give receipts, releases and other discharges for moneys payable to the Fund and for the claims and demands of the Fund;
- (d) **authorised signatures:** to determine who is entitled to sign documents in connection with the Fund;
- (e) **bank accounts:** to open bank accounts and to make regulations for the operation of bank accounts, including without limitation the signing and endorsing of cheques;
- (f) **benefits:** in relation to any benefits payable from the Fund:
 - (i) decisively and conclusively calculate and determine the amount of the benefit and the person or persons entitled to all or part of a benefit; and
 - (ii) delay or otherwise determine terms in relation to the timing of payment of any benefit in such circumstances the Trustee considers reasonable and appropriate (including, without limitation, to allow the Trustee time to determine a fair and reasonable price for assets being sold, and to receive the proceeds);
- (g) **insurance:** to obtain insurance in respect of the Fund, any Beneficiary, the Trustee or a director or officer of the Trustee and pay any insurance premiums out of the assets of the Fund;
- (h) **Tax:** to take any action which the Trustee may consider appropriate in taking account of any Tax, including without limitation –
 - (i) reducing or otherwise adjusting the amount of any benefit payable from the Fund; and
 - (ii) establishing reserves and making provisions in the accounts of the Fund and payments from the Fund to relevant governmental authorities;
- (i) **acting on advice:** to act on the advice or opinion of a Qualified Adviser (whether or not that advice or opinion is obtained by the Trustee) in relation to any matter or question without being liable in connection with anything done or omitted to be done by the

Trustee or a delegate or representative of the Trustee in good faith based on that advice or opinion;

- (j) **undertakings and indemnities:** to give an undertaking or indemnity in respect of an obligation assumed or undertaken by the Trustee in accordance with this Deed or by a delegate of the Trustee in accordance with the terms and conditions of its appointment;
- (k) **arbitration, conciliation and mediation:** to refer any dispute involving the Trustee or the Fund, or any claim or demand by or against the Trustee or the Fund, to arbitration, conciliation or mediation and observe and perform any award, determination or recommendation of the arbitrator, conciliator or mediator; and
- (l) **administrative flexibility:** to make and adopt rules and procedures and impose conditions and requirements in relation to:
 - (i) the calculation and rounding-off of contributions, benefits, interest and investment earnings;
 - (ii) the payment and deduction of premiums in respect of death and disability benefits;
 - (iii) the determination of periods of time;
 - (iv) any matters relating to the payment of death benefits including in relation to Binding Death Benefit Nominations and Non-lapsing Binding Death Benefit Nominations;
 - (v) where the Trust Deed or Relevant Law permits a discretion to be exercised by a person other than the Trustee with the Trustee's consent – the giving of that consent; and
 - (vi) to any other matters which the Trustee may consider appropriate for the convenient administration of the Fund.

1.4.3 Remuneration of Trustee.

Except as otherwise agreed between the Trustee and the Principal Employer, neither the Trustee nor a director of the Trustee is entitled to commission or remuneration from the Fund in respect of the office of Trustee or director but the Trustee may pay from the Fund reasonable expenses of a director of the Trustee in connection with that office.

1.4.4 Delegation by Trustee.

Except to the extent expressly provided otherwise elsewhere in this Deed, the Trustee as it sees fit may -

- (a) delegate a Power exercisable by the Trustee and a duty of the Trustee to any person in any manner and upon any terms and conditions; and
- (b) vary or revoke a delegation and exercise a Power or perform a duty in conjunction with or to the temporary or permanent exclusion of a delegate.

Part 1.5 Fund Expenses

Subject to clause 1.7.1, any specific provision of any of the subsequent divisions of this Deed, and any contrary agreement between the Trustee and the Principal Employer, Fund Expenses

will be paid from the Fund and an Employer will be reimbursed from the Fund in respect of Fund Expenses paid by that Employer.

Part 1.6 Information regarding Fund

1.6.1 Confidentiality.

Except to the extent:

- (a) reasonably necessary in the operation, management and administration of the Fund and in properly giving effect to this Deed; or
- (b) required by the Relevant Law,

the Trustee, each Investment Manager and each servant, delegate or representative of the Trustee must treat as confidential all information regarding the Fund, Members, Beneficiaries, Employees and Employers which becomes known to that person in connection with the operation, management and administration of the Fund.

1.6.2 Information from Employers.

An Employer must, as and when requested by the Trustee, give to the Trustee all information in the Employer's possession or under the Employer's control which may be reasonably necessary for the operation, management and administration of the Fund.

1.6.3 Information for Employers.

Except for any matter which is the subject of a binding obligation of confidence imposed on the Trustee, the Trustee must cause to be provided to the Principal Employer as and when requested by the Principal Employer -

- (a) a copy of each set of audited accounts of the Fund together with the accompanying audit report;
- (b) a list of the investments of the Fund and a copy of any agreement with, and instructions affecting, an Investment Manager or a delegate of the Trustee in relation to investments; and
- (c) any other information which an Employer may reasonably require in order to determine and discharge an obligation or liability of the Employer in connection with the Fund or to exercise a Power or perform a duty of the Employer.

Part 1.7 Indemnities and Protections

1.7.1 Indemnification of Trustee and officers.

The Trustee, each director of the Trustee, each former director of the Trustee and each officer and former officer of the Trustee (as designated by the Trustee) is exempted from liability, and is to be indemnified out of the Fund, in respect of any liability (including without limitation any cost, loss, damage or claim) caused or incurred in any manner (including without limitation negligence) in connection with the office of Trustee or director or officer, as the case may be, to the maximum extent (but only to the maximum extent) permissible under the Relevant Law and, without limiting the preceding words, the Trustee may -

- (a) effect or acquire insurance in respect of any potential liability of the Trustee or a director, former director, officer, former officer or employee of the Trustee; and
- (b) pay from the Fund premiums and other outgoings in respect of such insurance.

1.7.2 Trustee's liability limited to Fund assets.

Except to the extent that the Trustee cannot be exempted from personal liability under the Relevant Law, the Trustee is not required to make any payment (in respect of a benefit or otherwise) except out of the Fund or be liable to any greater extent than the moneys and property comprising the Fund.

1.7.3 Action notwithstanding interest.

- (a) A person may be a director, officer, servant or delegate of the Trustee, and may exercise a Power exercisable by virtue of that office or position, notwithstanding that that person is an Employee, a Member or a Beneficiary.
- (b) The Trustee (in its capacity as trustee of the Fund or in any other capacity) and any director, officer, servant or delegate of the Trustee may (as applicable), subject to Relevant Law:
 - (i) participate in the Fund;
 - (ii) deal with and contract with the Trustee or any person associated with the Trustee;
 - (iii) have any interest in a person contracting with the Trustee and retain any profit or other benefit arising from such a transaction; and
 - (iv) act in the same or a similar capacity in relation to any other Approved Benefit Arrangement.

Part 1.8 Investment of Fund

1.8.1 Investment of Fund assets.

The Trustee may apply the whole or any part of the Fund in any manner or form that the Trustee may consider to be an investment and suitable for the Fund, including without limitation any manner or form in which the Trustee could invest if acting personally and not in a fiduciary capacity but as the sole and absolute legal and beneficial owner of the Fund.

1.8.2 Mixing funds.

Without limiting clause 1.8.1, the Trustee may acquire any property either alone or in conjunction with any other person (including without limitation the Trustee acting as trustee or manager of another trust) and mix money or property forming part of the Fund with any other money or property (including without limitation money or property held or administered by the Trustee as trustee or manager of another trust) but so long as at all times separate and distinct records are maintained in order to enable ready identification of the moneys and property attributable to the Fund.

1.8.3 Investment Options.

- (a) **Investment Options.** The Trustee may establish Investment Options and may invite a Beneficiary to elect to invest all or part of the Beneficiary's Aggregate Account Balance in one or more Investment Options.
- (b) **Variation of elections.** At any date or dates determined by the Trustee, the Trustee may allow a Beneficiary to revoke or vary any previous Investment Option election made by the Beneficiary and to make further elections.
- (c) **Conditions.** The Trustee may impose whatever terms and conditions the Trustee considers appropriate in relation to Investment Options or Investment Option elections, including in relation to the form and manner in which Investment Option elections are to be given.

1.8.4 Accounting for Investment Options.

Where any part of a Beneficiary's Aggregate Account Balance is invested in an Investment Option, in determining how and to what extent the relative investment performance of that Investment Option is allocated to the Beneficiary's Aggregate Account Balance, the Trustee -

- (a) will have due regard to the extent to which, in the opinion of the Trustee, the Beneficiary's Aggregate Account Balance is represented by or is attributable to, on the one hand, investments forming part of an Investment Option and, on the other hand, investments not forming part of an Investment Option; and
- (b) may allocate that investment performance to the Beneficiary's Aggregate Account Balance on such basis as the Trustee may determine either generally or in any particular case, including without limitation by way of unit price movements or a particular Declared Rate.

1.8.5 Overriding conditions.

- (a) **Maximum limits.** The aggregate amount which may be invested or applied in respect of a Beneficiary in an Investment Option must not exceed the Beneficiary's Aggregate Account Balance.
- (b) **Trustee not bound.** The Trustee is not bound to establish or maintain any Investment Option or, having established an Investment Option, to make it available to any particular Beneficiary, and the Trustee may vary, discontinue or dispose of any such arrangement or facility, as it considers in its absolute discretion.
- (c) **Trustee not liable.** The Trustee is not liable or responsible for or in connection with any cost, loss, expense or detriment suffered by any person as result of the exercise, partial exercise or non-exercise of any Power exercisable by the Trustee under this part 1.8 including without limitation any detriment suffered as a result of the Trustee failing to act on any election by a Beneficiary or any delay by the Trustee in doing so.
- (d) **Apportionment of costs.** The Trustee may apportion the costs of any special investment arrangements established and maintained under this part 1.8 between Beneficiaries' Aggregate Account Balances on such basis as the Trustee determines.

1.8.6 Unitisation.

- (a) **Division into Units.** The Trustee may for the purpose of allocating the investment earnings of the Fund, if it thinks necessary or desirable, divide any or all of its investment portfolio, including any or all Investment Options, into Units and allocate Units to

Members' accounts and all other accounts and reserves maintained for the purposes of the Fund.

- (b) **Rules.** The Trustee may adopt rules from time to time in relation to:
- (1) the pricing of Units;
 - (2) switching between Unit Classes;
 - (3) the method and frequency of valuing the investment portfolio; and
 - (4) any other matter which the Trustee determines to be necessary or appropriate for administering the Fund as a unitised fund.
- (c) **Calculation by reference to Unit Price.** Where this Deed refers to the balance, or the amount standing to the credit of an account or reserve maintained for the purposes of the Fund and the relevant account or reserve is unitised, it is taken to be a reference to the account or balance calculated by reference to the number of Units in the account or reserve and the relevant Unit Price (and a reference in this Deed to the crediting or debiting of investment earnings at the Declared Rate (if positive or negative, respectively) shall be a reference to the allocation of the investment earnings of the Fund by a change in the relevant Unit Price).
- (d) **Unit Prices.** The Trustee may determine different Unit Prices to apply to a specific Unit Class for different purposes.
- (e) **Other.** The Trustee may do anything that the Trustee determines is reasonably required to maintain the Fund, as a unitised fund.

Part 1.9 Insurance Arrangements

1.9.1 Effecting insurance.

The Trustee may acquire, hold, vary or dispose of one or more policies of Group Life Insurance or assurance of any kind issued by an Insurer to the Trustee in respect of a Beneficiary or class of Beneficiary.

1.9.2 Benefits: restrictions and adjustments.

- (a) **Limitations imposed by Insurer.** Unless otherwise agreed between the Trustee and the Principal Employer, any benefit of the Fund in respect of which the Trustee seeks to effect, or effects, insurance must be reduced to the extent to which -
- (1) for any reason the Insurer fails to provide insurance; or
 - (2) for any reason the Insurer -
 - (A) fails to provide or increase insurance;
 - (B) reduces or terminates insurance;
 - (C) limits or restricts insurance or the circumstances in which insurance proceeds will become payable; or
 - (D) refuses to consider, defers or denies a claim in whole or in part.

The Trustee will adjust that benefit, and any other benefit which the Trustee may consider to be affected, in the manner and to the extent the Trustee considers necessary in order to effect and take account of that reduction.

- (b) **Alternative insurance.** If an event provided for in clause 1.9.2(a) occurs in relation to insurance sought or effected, the Trustee is not bound to seek alternative insurance with the same or another Insurer. If the Trustee decides to seek alternative insurance, the Trustee may limit that search to the Insurer determined by the Trustee.
- (c) **Conditions of payment of insurance proceeds.** In any case, unless otherwise agreed between the Trustee and the Principal Employer, the amount, time for and basis of payment of all or part of a benefit in respect of which insurance has been effected must be adjusted in the manner and to the extent necessary to take account of the terms and conditions upon which insurance proceeds are payable.

1.9.3 Trustee not required to form opinion.

For the avoidance of doubt:

- (a) if a policy of insurance or assurance issued by an Insurer to the Trustee provides an insured benefit for or in respect of a Beneficiary which is payable by the Insurer to the Trustee on behalf of or for the benefit of the Beneficiary; and
- (b) the policy provides that the payment of the benefit is subject to the Insurer forming an opinion on any matter in relation to the Beneficiary,

the Trustee is not required to form that opinion unless expressly stated in this Deed.

1.9.4 Benefits: self-insurance.

- (a) **Definitions.** In this clause 1.9.4 -

“**Approved Insurer**” means the Insurer determined by the Trustee in consultation with the Principal Employer from time to time either generally or in any particular case.

“**Insurable Component**” means at any particular date in respect of a Member and a benefit provided for in any provision of this Deed the amount agreed between the Trustee and the Principal Employer from time to time, after obtaining the advice of the Actuary, either generally or in any particular case and, in the absence of such agreement, the amount representing the future service component of a Member’s death or disability benefit.

- (b) **Reduction of uninsured benefits.** Subject to clause 1.9.4(d) and to any contrary agreement between the Trustee and the Principal Employer, where -

- (1) the Trustee considers that; or
- (2) subject to part 1.2, at the request of the Principal Employer the Approved Insurer advises that,

on the balance of probabilities the Approved Insurer would have taken an action provided for in clause 1.9.2(a)(1) or (2) if the Trustee had sought from time to time during the Member’s membership of any division of this Fund to effect Group Life Insurance with the Approved Insurer on its standard terms for standard lives in respect of the whole of the Insurable Component of any benefit secured or to be secured under any provision of this Deed (having regard to changes in particular Insurable Components, and in the Approved Insurer’s standard terms, from time to time), the amount of any benefit

otherwise payable under any provision of this Deed must be reduced to the extent that, in consequence of that action by the Approved Insurer -

- (3) Group Life Insurance would not have been available from the Approved Insurer on its standard terms for standard lives; or
- (4) Group Life Insurance, or the proceeds thereof, would have otherwise been refused, withheld, reduced, terminated, limited or restricted by the Approved Insurer,

either generally or in any particular case, but that benefit must not hereby be reduced below the sum of a Member's -

- (5) Accrued Retirement Benefit; and
- (6) Aggregate Account Balance, if any, (ignoring in determining the Aggregate Account Balance any insurance proceeds that otherwise would have been credited under (7)); and
- (7) the amount of Group Life Insurance (if any) actually effected and payable in respect of the Member and that benefit under this Deed.

The Trustee will adjust that benefit, and any other benefit which the Trustee may consider to be affected, in the manner and to the extent the Trustee considers necessary in order to effect and take account of that reduction.

- (c) **Advice to Trustee.** In forming an opinion under clause 1.9.4(b)(1), the Trustee may rely on the advice or opinion of the Approved Insurer.
- (d) **Requests by Principal Employer.** Subject to part 1.2, in the case of a request by the Principal Employer for the Approved Insurer to advise under clause 1.9.4(b)(2) -

- (1) the request will only be made -
 - (A) firstly, after the Principal Employer has consulted the Trustee and the Union Council; and
 - (B) secondly, where the Principal Employer (after obtaining the advice of the Actuary) believes that it is necessary to obtain the formal advice of the Approved Insurer under clause 1.9.4(b) in order to be reasonably satisfied that the mortality or morbidity experience of the Fund (as to rate or cost of claims) is not materially inconsistent with the corresponding experience of superannuation and like schemes which insure their corresponding risks with the Approved Insurer;
- (2) the request must be in writing and a copy of the request must be given to the Trustee; and
- (3) notwithstanding anything expressed or implied to the contrary in clause 1.9.4(b), neither the request nor any advice by the Approved Insurer in direct response to that request shall -
 - (A) prejudice any benefit which is or becomes payable from the Fund before the date the request is given to the Approved Insurer (the "Notice Date"); or

- (B) reduce the amount of any benefit which becomes payable to or in respect of a Member on or after the Notice Date under any provision of this Deed.
- (e) **Information for and fees of Approved Insurer.** The Trustee and each Employer must cause to be provided to the Approved Insurer all information reasonably required by the Approved Insurer in order to make a determination or give advice in accordance with clause 1.9.4(b). The costs and charges of the Approved Insurer in connection with a determination under clause 1.9.4(b) are Fund Expenses.
- (f) **Prudential management of liabilities.** To the extent that the Trustee does not effect insurance in respect of benefits under clause 1.9.1, the Trustee must make appropriate arrangements so that the Trustee can meet liabilities with respect to the Insurable Component of benefits that may from time to time become payable from the Fund ("**Self-Insured Benefits**"). Those arrangements must include (with the advice of the Actuary) the establishment, maintenance and monitoring of a self-insurance reserve that is expected, with proper recognition of the likelihood of the events that would require the payment of Self-Insured Benefits, to be sufficient to cover such Self-Insured Benefits.
- (g) **Quarantine.** The Trustee must ensure that the cost and risk of self-insuring any benefits under this clause 1.9.4 are borne solely by the Employers and Members to whom self-insurance applies in accordance with clause 1.9.4(f) ("**Self-Insured Members**"). The Trustee must also ensure that –
 - (1) only the benefits of Self-Insured Members are adjusted under clause 1.19.4(3) in the event of a funding shortfall because the Trustee has decided to self-insure those Fund benefits under this clause 1.9.4; and
 - (2) only the Fund assets attributable to the Self-Insured Members and their Employers are used to meet any liabilities the Trustee has with respect to Self-Insured Benefits.

1.9.5 Effect of adjustments.

Any adjusted benefits provided under clause 1.9.2 or 1.9.4 are in lieu of and in full satisfaction of the benefits which would or might have been or become payable but for those clauses.

1.9.6 Additional insurance benefits.

If, as a result of the Trustee having effected insurance under clause 1.9.1:

- (a) an extended cover or a continuation cover amount ("**insured amount**") is paid by the Insurer to the Trustee in respect of a Member; and
- (b) the insured amount is not otherwise included in the calculation of any other benefit that is otherwise payable to or in respect of the Member under any other division of the Fund ("**ordinary benefit**"),

the Trustee may pay the insured amount to or in respect of the Member in addition to the ordinary benefit, whether or not the ordinary benefit has already been paid from the Fund at the time the Trustee receives the insured amount from the Insurer.

Part 1.10 Associated Employers

1.10.1 Agreements with Associated Employer.

The Trustee and the Principal Employer may enter into an agreement with any person approved by the Principal Employer for that person to become an Associated Employer. Subject to any conditions imposed under the relevant agreement or this Deed, Employees of an Associated Employer who become eligible as provided in that agreement or this Deed are eligible to participate in the Fund.

1.10.2 Form and status of agreements.

Any agreement made under clause 1.10.1 may be in any form and subject to any conditions acceptable to the Trustee and the Principal Employer and may be amended or replaced by a subsequent agreement between the parties or in the manner provided in this Deed as if the agreement was a part of this Deed.

1.10.3 Conflict between division 1 and Associated Employer agreement.

- (a) If there is a conflict between this division 1 and an agreement made in accordance with clause 1.10.1, this division 1 prevails.
- (b) Except where the agreement expressly provides otherwise, if there is a conflict between an agreement and any provision of this Deed other than this division 1, the agreement prevails.

Part 1.11 Employer Ceasing Business

1.11.1 Cessation of business.

If -

- (a) where an Employer is or includes a body corporate, a binding resolution is passed or order is made, or any other enforceable action is taken, for the purpose of winding up that body or a scheme of arrangement providing for the dissolution of that body is approved by a court;
- (b) where an Employer is or includes a partnership, that partnership is dissolved;
- (c) where an Employer is or includes a natural person or natural persons, that person or any of those persons becomes bankrupt; or
- (d) an Employer ceases to carry on business for any reason,

the Trustee may enter into an agreement with a person (a “**successor**”) which in the opinion of the Trustee, wholly or partially succeeds or replaces the Employer for the successor to take the place of the Employer (as Principal Employer or an Associated Employer, as the case may require) under this Deed but, if the Employer concerned is the Principal Employer, the Trustee may agree with an Associated Employer for it to assume the office of Principal Employer and agree with the successor for the successor to become an Associated Employer. An agreement may be in any form acceptable to the Trustee and is binding on all interested persons.

1.11.2 Associated Employer not replaced.

If an event provided for in clause 1.11.1 occurs in relation to an Associated Employer but no agreement is entered into as provided in that clause within 90 days (or any other period determined or allowed by the Trustee) after the date the relevant event occurred, the Trustee is deemed to have received on the last day of that period a notice from the Associated Employer in accordance with clause 1.19.1 that the Associated Employer has decided to terminate all of its payments to and in respect of the Fund with effect on that last day.

1.11.3 Principal Employer not replaced: closure of Fund.

If an event provided for in clause 1.11.1 occurs in relation to the Principal Employer but no agreement is entered into as provided in that clause within 90 days (or any other period determined or allowed by the Trustee) after the date the relevant event occurred, part 1.19 applies as if the Trustee had received on the last day of that period a notice from each Employer in accordance with clause 1.19.1 that the Employer had decided to terminate all of its payments to and in respect of the Fund with effect on that last day.

Part 1.12 New Principal Employer

Without limiting part 1.11, by the execution of an appropriate instrument or instruments in a form acceptable to both the existing Principal Employer and the proposed Principal Employer, the Principal Employer for the time may be replaced as Principal Employer by another person.

Part 1.13 Residual and Surplus Assets

1.13.1 Assets but no Members or Beneficiaries.

If at any time there are no Members or Beneficiaries and, in the opinion of the Trustee, all benefits which could become payable from the Fund have been paid, then (unless otherwise agreed between the Principal Employer and the Trustee) the Fund must be dissolved, any moneys and other assets then remaining in the Fund (after payment of Fund Expenses) must be realised, and the proceeds must be distributed to the Principal Employer.

1.13.2 Surplus assets.

(a) **Definitions.** In this clause 1.13.2 -

“Total Fund Value” means the total net market value (as determined by the Actuary) of all of the assets of the Fund as at the date of determination; and

“Total Accrued Benefit Value” means -

- (1) 120% of the sum of:
 - (A) the aggregate of the Accrued Retirement Benefits of all Employed Members as at the date of determination; and
 - (B) the aggregate value (as determined by the Actuary) as at the date of determination of all benefits which, as at that date, are payable from the Fund but have not been fully paid or provided from the Fund in accordance with this Deed, including without limitation any preserved or deferred benefit held in the Fund; and

- (2) the aggregate of all Aggregate Account Balances in all divisions of all Members as at the date of determination (but not including amounts already accounted for in clause 1.13.2(a)(1)(B)),

together with any additional amount agreed between the Principal Employer and the Trustee, after obtaining the advice of the Actuary.

- (b) **Investigation by Actuary.** Whenever required by the Principal Employer and the Trustee, the Actuary must investigate the Fund and as soon as practicable report to the Principal Employer and the Trustee in writing as to the Total Fund Value and the Total Accrued Benefit Value as at the date at which the investigation is made (the "effective date"). The Trustee and the Principal Employer must make all reasonable efforts to arrange and facilitate an investigation and provide to the Actuary the information reasonably required by the Actuary to complete an investigation.

- (c) **Existence of assets.** If a report by the Actuary reveals that the Total Fund Value exceeds the Total Accrued Benefit Value as at the effective date of that report, then -

- (1) unless otherwise agreed between the Trustee and the Principal Employer; and
- (2) subject to the restrictions and conditions in the Relevant Law concerning payments from the Fund to an Employer,

the excess must be paid from the Fund to the Principal Employer as soon as practicable, but if the Actuary further investigates the Fund before payment to the Principal Employer has been completed and advises the Trustee that either -

- (3) the Total Fund Value has changed and is less than the Total Accrued Benefit Value; or
- (4) payment of all or part of a prospective payment pursuant to that request would cause the Total Fund Value to be less than the Total Accrued Benefit Value,

the Trustee must, in the first case, refuse to make any further payment pursuant to the request by the Principal Employer or, in the second case, reduce the amount payable pursuant to that request so that the Total Fund Value does not become less than the Total Accrued Benefit Value.

Part 1.14 Admission of Members

1.14.1 Normal application procedures.

Subject to clause 1.14.2 -

- (a) application to become a Member must be made to the Trustee by an Eligible Person or an Eligible Employee in a form determined or approved by the Trustee and an applicant whose application is accepted by the Trustee becomes a Member on the date of acceptance by the Trustee or, in the case of an Eligible Employee, any earlier or later date determined by the Trustee either generally or in any particular case or, in the case of an Eligible Person, any earlier or later date determined by the Trustee either generally or in any particular case;
- (b) the admission of an Eligible Person as a Member of the Fund shall be subject to any conditions imposed by the Trustee, and the Trustee may subsequently determine to

remove or vary any condition so imposed in respect of the Member at the time of the Member's admission to membership;

- (c) the admission of an Eligible Employee as a Member of the Fund shall be subject to any conditions imposed by the Trustee, and the Trustee may subsequently determine to remove or vary any condition so imposed in respect of the Member at the time of the admission to membership; and
- (d) if an Eligible Employee refuses or otherwise fails to become a Member when first eligible to do so, that Eligible Employee may subsequently only apply to become a Member with the consent of the Trustee and subject to any conditions imposed by the Trustee.

1.14.2 Deemed admission.

Subject to any conditions imposed by the Principal Employer or the Trustee and without limiting any following provision of this part 1.14, the Trustee, after consulting the Principal Employer, may determine, either generally or in any particular case, that an Eligible Employee who has not applied for membership is deemed to become a Member.

1.14.3 Member re-joining Fund.

If, having previously ceased to be an Employee, a person again becomes an Employee, then unless otherwise agreed between the Trustee and the Principal Employer either generally or in any particular case -

- (a) during and in respect of the period after the date of again becoming an Employee that person must be treated for all intents and purposes under this Deed as if that person had never previously been an Employee of the Employer or a Member of the Fund; but
- (b) if that person is already a Member by reason of an existing benefit secured under this Deed (including without limitation a deferred benefit under division 4 or preserved benefit or any other benefit which has not yet been paid or transferred from the Fund), then the benefits secured for and in respect of that person after the date he or she again becomes an Employee may be adjusted by the Trustee in the manner and to the extent it considers appropriate to take account of that existing benefit, except that no such adjustment shall increase the costs or liabilities of an Employer without that Employer's consent.

1.14.4 Categories of Members.

- (a) **Categorisation by Principal Employer.** Subject to clause 1.14.4(c), by a written notice given to the Trustee, the Principal Employer may, subject to any conditions specified in the notice -
 - (1) establish a category of Members and define the terms and conditions governing -
 - (A) entry to and exit from that category;
 - (B) the contributions to be payable to the Fund and the benefits to be provided from the Fund for and in respect of a Member during and in respect of any period when the Member is classified in that category; and
 - (C) the division, or divisions, of the Fund which is applicable to that category from time to time,
- and

- (2) amend, revoke or replace any such notice previously given by the Principal Employer either generally or in any particular case,

and a Member shall be classified in a category established under this clause 1.14.4 during any period of membership of the Fund when the Member is classified in that category by a notice given to the Trustee by the Principal Employer or falls within a group or class of Members defined in respect of that category in a notice given to the Trustee by the Principal Employer.

- (b) **Effect of categorisation.** Subject to clause 1.14.4(c), a notice given by the Principal Employer under clause 1.14.4(a) is binding on all interested persons without the need to amend this Deed, and the rights, interests and obligations of a Member (and of any other person otherwise entitled to claim in respect of a Member or on the occurrence of an event or circumstance affecting the Member) shall be adjusted in the manner and to the extent necessary in taking account of such a notice.
- (c) **Restrictions on categorisation.** Unless otherwise agreed between the Trustee and the Principal Employer either generally or in any particular case, a Member may not be retrospectively classified into or out of a category established under this clause 1.14.4 and neither -
 - (1) a notice given by the Principal Employer to the Trustee under clause 1.14.4(a); nor
 - (2) the classification or reclassification of a Member into or out of a category of Members pursuant to such a notice,

shall adversely affect the rights of a Member to accrued benefits under the Fund as at the date that notice is received by the Trustee or the date of that classification or reclassification, as the case may be, including without limitation -

- (3) in the case of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, the amount of the benefit which has accrued, or become payable, to the Member before the relevant date; or
- (4) in the case of a benefit other than a benefit referred to in (3) above, the amount of the benefit which is, or may become, payable to the Member to the extent that that benefit has accrued in relation to a period before the relevant date.

1.14.5 Deed binding.

Each Beneficiary is bound by this Deed and any -

- (a) condition properly imposed under this Deed in respect of a Beneficiary;
- (b) consent, approval or agreement given or made by a Beneficiary; and
- (c) act of the Trustee or an Employer pursuant to or as a consequence of that condition, consent, approval or agreement,

is binding on the Beneficiary concerned and any other person who is an heir, executor or assign of the Beneficiary or is or would otherwise have been entitled to claim a benefit in respect of the Beneficiary or upon the occurrence of an event or circumstance affecting the Beneficiary, and this Deed takes effect accordingly.

1.14.6 Transfers between Employers.

- (a) A Member does not cease to be a Member by reason of ceasing to be an Employee of one Employer (“**previous Employer**”) and immediately becoming an Employee of another Employer (“**new Employer**”) unless the new Employer is an Employer notified to the Trustee by the Principal Employer pursuant to this clause 1.14.6 either generally or in a particular case.
- (b) If the change of Employer referred to in clause 1.14.6(a) results in the Member not ceasing to be a Member and in the new Employer’s contributions being made in respect of the Member to a division of the Fund (“**new division**”) which is different from the division into which the previous Employer made contributions (“**previous division**”), an amount as determined by the Trustee and the Principal Employer will be transferred in respect of the Member from the previous division to the new division.

1.14.7 Categorisation of Members.

- (a) The divisions of the Fund other than division 1 relate to and provide for groups of Members. Subject to the express provisions of a division concerning the categorisation or re-categorisation of a Member –each Member is in whichever category or division the Trustee determines; and
- (b) notwithstanding clause 1.14.7(a) a Member may be categorised by the Principal Employer in any division pursuant to clause 1.14.4.

1.14.8 Other schemes.

- (a) **Category of Members.** For the purposes of this clause 1.14.8, there shall be a category of Members known as “Corresponding Benefit Members” and a Member shall be classified as a Corresponding Benefit Member during any period determined by the Principal Employer and notified to the Trustee in a form reasonably acceptable to the Trustee, except that a Member may not be retrospectively classified as a Corresponding Benefit Member without the consent of the Trustee.
- (b) **Effect of classification as Corresponding Benefit Member.** If a benefit (a “Corresponding Benefit”) is provided for or secured, or could reasonably be expected to become payable, in respect of a Corresponding Benefit Member under another scheme or arrangement any part of the costs of which are borne directly or indirectly by an Employer or any governmental authority on retirement, death or disablement or in any other circumstances similar to those in which a benefit may be provided under this Deed, then (subject to part 1.2) -
 - (1) the contributions which an Employer would otherwise be required or permitted to make shall be reduced to such extent as the Principal Employer may determine to be appropriate in taking account of the Corresponding Benefit; and
 - (2) any benefit otherwise payable from the Fund to or in respect of the Member must (unless otherwise agreed between the Trustee and the Principal Employer) be reduced by the amount of any Corresponding Benefit but, to the extent that a Corresponding Benefit is provided in a different manner or form to an applicable benefit under this Deed, the manner and the extent of any such adjustment shall be determined by the Trustee, after obtaining the advice of the Actuary.

Any reduction or adjustment in contributions or benefits under this clause 1.14.8 is binding on all interested persons without the need to amend this Deed.

1.14.9 Temporary cessation of employment.

If a Member ceases to be an Employee in circumstances in which it is reasonable to expect that cessation will only be of a temporary nature and that the Member will soon again become an Employee, the Member's membership of the Fund may continue subject to conditions agreed between the Trustee, the Member and the Employer.

Part 1.15 Information from and for Applicants and Members

1.15.1 Provision of information by applicants and Members.

- (a) Each Eligible Employee and Eligible Person must provide all information and evidence, sign all documents, undergo all medical examinations and tests, and generally satisfy all standards and requirements as and when the Trustee or (if applicable) the Principal Employer may reasonably consider necessary or desirable.
- (b) Each Member must provide all information and evidence, sign all documents, undergo all medical examinations and tests, and generally satisfy all standards and requirements as and when the Trustee may reasonably consider necessary or desirable.

1.15.2 Action on non-compliance.

Without limiting clause 1.14.1, if -

- (a) an Eligible Employee fails to comply with clause 1.15.1(a) or to satisfy a test, standard or requirement laid down under that clause to the satisfaction of the Trustee or the Principal Employer, as the case may be;
- (b) a Member fails to comply with clause 1.15.1(b) or to satisfy a test, standard or requirement laid down under that clause to the satisfaction of the Trustee; or
- (c) a statement made or evidence provided by or in respect of an Eligible Employee or a Member is found to contain a misstatement, error, mistake, inaccuracy or suppression,

the Trustee, after obtaining the advice of the Actuary, may -

- (1) in the case of an Eligible Employee, admit that person as a Member subject to conditions determined or approved by the Trustee or refuse to admit that person as a Member; or
- (2) in the case of a Member, impose conditions.

Part 1.16 Special Arrangements and Situations

1.16.1 Individual agreements.

Subject to clause 1.16.5 -

- (a) the Principal Employer may agree with an Employee that the Employee is admitted to membership of the Fund subject to the conditions contained in that agreement, and the Principal Employer may also agree with a Member to vary the conditions of a Member's membership of the Fund;
- (b) an agreement under clause 1.16.1(a) must be evidenced in writing (in one or more documents) by the Principal Employer and the Employee or Member concerned in a

form acceptable to the Principal Employer, and may be varied, replaced or revoked by a subsequent written agreement between the Principal Employer and the Employee or Member concerned or in the manner provided for in this Deed as if the agreement was actually part of this Deed;

- (c) if there is a conflict between an agreement under clause 1.16.1(a) (as varied or replaced from time to time) and this division 1, this division 1 prevails but (except where the agreement expressly provides otherwise), if there is a conflict between the agreement and any provision of this Deed other than this division 1, the agreement prevails;
- (d) the Principal Employer must provide a copy of each agreement (and any document which varies, replaces or revokes that agreement) to the Trustee; and
- (e) the Trustee must give effect to each agreement, as varied, replaced or revoked from time to time.

1.16.2 Augmentation of benefits.

Subject to clause 1.16.5 -

- (a) the Principal Employer may direct the Trustee to provide from the Fund a benefit or other amount greater than would be provided but for that direction;
- (b) the Principal Employer may revoke or vary a direction given under clause 1.16.2(a); and
- (c) the Trustee must give effect to each direction, as varied or rescinded from time to time.

1.16.3 Part-time employment, absence or non-eligibility.

Subject to clause 1.16.5 -

- (a) the Principal Employer, after consulting the Union Council, may determine conditions in relation to contributions payable and benefits to be provided in respect of a Member of Division 2 or Division 5 during and in respect of any period when, in the opinion of the Principal Employer, the Member is employed by their Employer in other than a full-time capacity, the Member is absent from active employment with their Employer (whether with or without pay or the approval of the Employer) or the Member remains in the employ of their Employer but no longer satisfies the criteria for classification as an Eligible Employee;
- (b) the Principal Employer must give the Trustee written notice of each determination under this clause 1.16.3, which is binding on all interested persons without the need to formally amend this Deed and which may be varied, revoked or replaced by subsequent notice given by the Principal Employer to the Trustee; and
- (c) unless otherwise agreed between the Trustee and the Principal Employer, any determination by the Principal Employer under this clause 1.16.3 takes effect on the later of the date notice of that determination is received by the Trustee and the effective date (if any) specified in the notice.

1.16.4 Employed Members: Casual Employees.

- (a) In the case of a Casual Employee -
 - (1) that person is an Employed Member for the purposes of this Deed during the whole of each Employed Pay Period and also during the whole of each Pay Period which is not an Employed Pay Period but which occurs within the period

(the “relevant period”) of six consecutive Pay Periods immediately following an Employed Pay Period; and

- (2) that person ceases to be an Employed Member for the purposes of this Deed as at the earliest of -
 - (A) if no Employed Pay Period occurs in respect of the Member within the relevant period, the end of the sixth consecutive Pay Period immediately following the last Employed Pay Period;
 - (B) the date upon which a benefit becomes payable from the Fund to or in respect of the Member; and
 - (C) any earlier date accepted by the Trustee, after receiving from or in respect of the Member an application or request in a form acceptable to the Trustee together with any information or evidence which the Trustee may consider appropriate; and
- (3) the Trustee is not required to, but may if it so determines, offer insurance cover.

1.16.5 Control by Trustee.

- (a) **Restrictions under Relevant Law.** Without limiting part 1.2, to the extent that -

- (1) an agreement under clause 1.16.1;
- (2) a direction by the Principal Employer under clause 1.16.2; or
- (3) a determination by the Principal Employer under clause 1.16.3; or
- (4) a determination by an Employer, under a Power vested in it under any other provision of this Deed, to otherwise increase the amount of any benefit or other amount to be paid or provided from the Fund (including without limitation a determination to increase any period of time which is to be taken into account in calculating a benefit) or to reduce, suspend or waive any contributions which would otherwise be payable to the Fund by any person other than an Employer,

constitutes the exercise of a discretion or the giving of a direction which is otherwise prohibited under the Relevant Law, that agreement, direction or determination shall only take effect with the consent of the Trustee.

- (b) **Other controls by Trustee.** Without limiting clause 1.16.5(a), if in the opinion of the Trustee, after obtaining the advice of the Actuary, such an agreement, direction or determination would cause a deficiency in the Fund, before giving effect to that agreement, direction or determination or in the course of doing so, the Trustee may require an undertaking from an Employer that it will contribute to the Fund additional amounts or rates of contributions which the Trustee, after obtaining the advice of the Actuary, may consider necessary in order to avoid a deficiency and, if an undertaking is not given or is not fulfilled to the satisfaction of the Trustee, the Trustee may refuse to give effect to or to continue to give effect to the agreement, direction or determination to which the undertaking relates.

1.16.6 Return of contributions.

If the Trustee receives contributions made by or in respect of a Member in a manner which is inconsistent with the Relevant Law, and the Trustee returns the contributions, the Trustee may:

- (a) return an amount lesser than the contributions received by the Trustee, or
- (b) return an amount greater than the contributions received by the Trustee,

in accordance with the Relevant Law.

Part 1.17 Member Contributions

1.17.1 Amount to be contributed.

Subject to this division 1, the amount of a Member's contributions to the Fund at any particular time must be determined in accordance with the relevant division of the Fund.

1.17.2 Adjustments for non-payment of Member contributions.

Without limiting clause 1.17.3 or clause 1.17.4, if the contributions payable by a Member are not paid to the Fund as and when required, the Trustee may impose any conditions in respect of the Member which the Trustee, after obtaining the advice of the Actuary, may consider appropriate.

1.17.3 Reduction, suspension or waiver.

- (a) **Decision by Principal Employer.** Subject to clause 1.16.5, clause 1.17.4 and any conditions determined by the Principal Employer and approved by the Trustee and the Member concerned (including without limitation conditions upon which contributions otherwise payable by the Member and interest must be made up by and in respect of the Member and conditions as to how benefits to be provided in respect of the Member must be adjusted to take account of a reduction, suspension or waiver), the Principal Employer may for any period determined by the Principal Employer reduce, suspend or waive contributions otherwise payable by the Member.
- (b) **Deemed payment.** Without limiting clause 1.16.5, clause 1.17.3(a) and clause 1.17.4, the Principal Employer may determine that contributions which would have been paid by a Member but for the exercise of a discretion as provided in that clause will be deemed to have been paid by the Member for the purpose of calculating the amount of or determining the eligibility for payment of any benefit payable pursuant to this Deed the amount of or eligibility for which depends on the amount of the contributions paid by the Member or the period during which the Member has contributed.
- (c) **Notification to Trustee.** The Principal Employer must notify the Trustee of any determination under clause 1.17.3(a) or clause 1.17.3(b) as soon as practicable.

1.17.4 Deemed Member contributions.

- (a) **Category of Members.** For the purposes of this clause 1.17.4, there shall be a category of Members known as "Deemed Contribution Members" and a Member shall be classified as a Deemed Contribution Member during any part of the period while he or she is an Employed Member as shall be determined by the Employer (with the approval of the Principal Employer, where it is not the Employer) and notified to the Trustee from time to time in a form reasonably acceptable to the Trustee, except that a Member may not be retrospectively classified as a Deemed Contribution Member, or retrospectively

reclassified as no longer being a Deemed Contribution Member, without the consent of the Trustee.

- (b) **Effect of classification as Deemed Contribution Member.** Subject to clause 1.16.5(b), during any period when a Member is classified as a Deemed Contribution Member, all of the contributions otherwise payable by the Member shall be waived but shall be deemed to have been paid by the Member for the purpose of determining the amount of or eligibility for a benefit the amount of or eligibility for which depends on the amount of contributions paid by the Member or the period for which the Member has contributed.

Part 1.18 Employer Contributions

1.18.1 Amount to be contributed.

Subject to this part 1.18 and part 1.19, each Employer must contribute to the Fund in respect of a particular Employee at any particular time the amount or rate of contributions determined by the Principal Employer from time to time in accordance with the relevant division (and, if the relevant division provides benefits to defined benefit members, after obtaining the advice of the Actuary) and consulting the Trustee. As soon as practicable, the Principal Employer must notify the Trustee of each determination in respect of an Employer under this clause 1.18.1.

1.18.2 Manner and timing of payment.

The contributions payable by an Employer must be paid to the Fund in the manner and at the times reasonably determined or approved by the Trustee. Contributions payable by one Employer may be paid by another Employer.

1.18.3 Cessation of payment.

Unless otherwise specified in this Deed or agreed between the Employer and the Trustee, no contributions are payable by an Employer in respect of a Member in respect of the period after the date the Member ceases to be an Employee.

1.18.4 Additional contributions.

In addition to any contributions provided for elsewhere in this Deed an Employer may contribute further amounts in respect of particular Members or groups of Members, and any additional contributions in respect of a Member under this clause 1.18.4 must be applied by the Trustee on the basis determined by the Principal Employer (subject to part 1.2) and advised to the Trustee.

Part 1.19 Termination, Non-payment or Inadequacy of Employer Payments

1.19.1 Notice by Employer.

- (a) Subject to part 1.2 and clause 1.19.3 but without limiting any Power vested in the Principal Employer or any other Employer under any other provision of this Deed to terminate, determine or redetermine the amount or rate of Employer contributions, an Employer may by written notice given to the Trustee and either generally or in respect of any person or persons named or described in that notice (or then or thereafter falling within a group or class of persons described in that notice) -
- (1) terminate all or any of its payments in respect of the Fund; or

- (2) reduce or suspend all or any of its payments in respect of the Fund to the extent specified in that notice and either indefinitely or for the period specified,

and any notice given by an Employer under this clause 1.19.1 takes effect on the date which is the later of the date that notice is received by the Trustee and the effective date (if any) specified in that notice, but a notice does not affect the Employer's liability in respect of payments due from the Employer before the notice takes effect.

1.19.2 Notice by Principal Employer for Associated Employer.

Subject to part 1.2 and clause 1.19.3, the Principal Employer may give a notice to the Trustee in terms of clause 1.19.1 on behalf of an Associated Employer. The notice is deemed to have been given by the Associated Employer in terms of clause 1.19.1 (whether or not endorsed or confirmed by the Associated Employer) and may not be revoked or varied without the approval of the Principal Employer.

1.19.3 Requirement to consult.

Before exercising any Power exercisable by the Principal Employer under clause 1.19.1 or clause 1.19.2, the Principal Employer will consult with the Union Council with a view to reaching agreement.

1.19.4 Non-payment or inadequacy of Employer payments.

If -

- (a) an Employer has given or is deemed to have given a notice pursuant to clause 1.19.1;
- (b) an Employer fails for any reason to pay an amount to the Fund as and when required under this Deed; or
- (c) having been requested by the Trustee to investigate the Fund and after consulting the Principal Employer, the Actuary advises the Trustee that, having regard to the payments being made and expected to be made to the Fund and the actual and expected assets of the Fund, in the opinion of the Actuary the Fund is inadequate to provide for the actual and expected liabilities of the Fund and that the Trustee should take action under this clause 1.19.4,

then -

- (1) in the case of a notice of termination of payments, unless otherwise agreed between the Trustee and the Principal Employer either generally or in any particular case, no contributions will be accepted from a Member, and no person will be admitted as a Member, during or in respect of any period when an Employer's payments are or would be terminated in respect of that person pursuant to that notice;
- (2) in any other case, the Trustee may refuse to accept contributions from a Member, and refuse to admit a person as a Member, during or in respect of any period when this clause 1.19.4 applies in respect of the Employer of that person; and
- (3) in any case, the Trustee, after obtaining the advice of the Actuary and subject to clause 1.19.6, may adjust any benefit which is or may become payable to or in respect of any person whom the Trustee may consider is affected by that termination, failure or inadequacy to the extent and in the manner the Trustee considers appropriate and equitable.

1.19.5 Revocation of notice or remedy of failure or inadequacy.

Subject to any conditions imposed by the Trustee, part 1.2 and clause 1.19.6, an Employer may -

- (a) revoke or vary a notice given or deemed to have been given by that Employer pursuant to clause 1.19.1; or
- (b) remedy a failure or inadequacy which has occurred or arisen in terms of clause 1.19.4,

and, in that event, the Trustee (after obtaining the advice of the Actuary) may adjust the rights and obligations of the persons who, in the opinion of the Trustee, are affected by the revocation, variation or remedy to the extent and in the manner determined by the Trustee.

1.19.6 Adjustment procedures and limits.

An adjusted benefit provided in respect of a person under this part 1.19 may be provided in any manner or form, by way of any arrangements and subject to any conditions determined by the Trustee either generally or in any particular case, and is in lieu of and in full satisfaction of any benefit which would or might have been or become payable from the Fund but for this part 1.19. Unless otherwise agreed between the Trustee and the Principal Employer, an adjustment made pursuant to clause 1.19.4(3) or clause 1.19.5 must not increase the amount of any benefit which, in the opinion of the Trustee after obtaining the advice of the Actuary, has accrued in respect of a person immediately prior to the effective date of that adjustment in respect of the period up to that date or improve the basis upon which benefits accrue during or in respect of any period after that date.

Part 1.20 General Conditions of Payment of Benefits

1.20.1 Normal amount and circumstances of payment.

Subject to this division 1, the amount and circumstances of payment of benefits in respect of a Member at any particular time must be determined in accordance with the relevant division of this Deed.

1.20.2 Benefits permitted, required and prohibited under Relevant Law.

- (a) The Trustee may (but is not obliged to) pay all or part of any benefit or interest in the Fund when permitted by Relevant Law.
- (b) The Trustee must pay any benefit or interest in the Fund when required by Relevant Law.
- (c) The Trustee must not pay any benefit or interest in the Fund if the payment would amount to a breach or contravention of the Relevant Law.

1.20.3 Payment of benefits.

- (a) **Manner and place of payment.** A benefit payable from the Fund is payable at the place and in the manner (including without limitation payment in specie or in kind, payment by electronic means or by way of instalments) determined by the Trustee and, without limiting clause 1.20.6, a person to whom a benefit is payable (whether in that person's own right or for and on behalf of another person) must upon request by the Trustee provide all information and do all acts and things which the Trustee may consider necessary or desirable in effecting payment.

(b) **Interest on benefits.**

The Trustee will determine the relevant Declared Rate for the purposes of the whole or any particular provision of this Deed and may determine to add interest to all or part of the following benefits:

- (1) any division 2 benefit, other than any relevant Voluntary Account Balance;
- (2) any division 5 benefit, other than any relevant Defined Benefit Member Account Balance, Productivity Accumulation Account Balance, Voluntary Account Balance and Special Accumulation Account Balance,

at the rate determined by the Trustee for all or part of the period between the date the benefit becomes payable out of the Fund to the date it is paid.

1.20.4 Standard of proofs.

Whenever it is necessary under this Deed for the Trustee, an Employer or other person to decide questions of fact, that person may act upon any proofs or presumptions which that person may consider satisfactory, whether or not they are strictly legal proofs or legal presumptions.

1.20.5 No personal claim.

No person is entitled to require a payment from the Fund except in accordance with this Deed.

1.20.6 Proof of qualification for benefits.

(a) **Claims and information.** Without limiting part 1.2 or clause 1.21.3, a person's entitlement to a benefit from the Fund is contingent upon -

- (1) the Trustee or an Employer being notified of that person's claim or intention to make a claim in respect of that benefit in writing or another manner or form reasonably satisfactory to the Trustee and within any period determined or allowed by the Trustee either generally or in any particular case; and
- (2) the availability to the Trustee or a delegate or nominee of the Trustee of all information, evidence and proofs required by the Trustee, delegate or nominee in order to be fully satisfied as to that person's existence, identity and whereabouts, and that person's entitlement or continued entitlement to receive that benefit, within any period determined or allowed by the Trustee either generally or in any particular case after the date on which the Trustee, delegate or nominee first requires that information, evidence or proof.

(b) **Failure to comply.** Without limiting clause 1.20.6(a) or clause 1.21.3 -

- (1) the Trustee may suspend consideration of a person's claim to or payment of a benefit until all required information, evidence and proofs become available to the satisfaction of the Trustee; and
- (2) whether or not any action has been taken to identify, locate, contact or advise a claimant or potential claimant, if at the expiration of any period provided for in clause 1.20.6(a)(1) no person has notified the Trustee or an Employer of a claim or intention to make a claim in respect of a particular benefit, that benefit ceases to be payable and (subject to clause 1.20.6(c)) shall be retained in the Fund.

- (c) **Overriding Trustee discretion.** Upon subsequent production of information, evidence or proofs satisfactory to the Trustee, the Trustee may pay all or part of a relevant benefit to a person whom the Trustee considers would have been entitled to that benefit but for the preceding provisions of this clause 1.20.6, but the Trustee is not under a duty to apply this clause 1.20.6(c) or to consider whether the Trustee should apply this clause, even if the Trustee has actual notice of a relevant matter.

1.20.7 Payment of benefits subject to division 4.

Wherever a provision of this Deed refers to a benefit being payable to or in respect of a Member as a result of a particular event or circumstance, the Trustee will not pay the benefit from the Fund to or in respect of the Member at that time if:

- (a) an election has been made by or in respect of the Member to defer payment of the benefit by transferring the benefit to division 4; or
- (b) the Trustee has determined to effect payment of the benefit by transferring the benefit from a division other than division 4 to division 4 before paying the benefit from division 4.

1.20.8 Payment of death benefits.

- (a) **Binding death benefit nominations.** Subject to clauses 4.4.4(f)(1), 4.5.4(f)(1), 4.5.5(e)(1) and 4.6.2, any benefit payable from the Fund on or after the death of a Member is payable:
- (1) to the Member's Nominated Beneficiary or Nominated Beneficiaries; or
 - (2) in accordance with clause 1.20.8(b) if at the time of the Member's death:
 - (A) there is no valid and effective Binding Death Benefit Nomination or Non-lapsing Binding Death Benefit Nomination in respect of the Member; or
 - (B) if payment in accordance with clause 1.20.8(a)(1) cannot otherwise be made.

For the avoidance of doubt, a Non-lapsing Binding Death Benefit Nomination will not be valid or effective until Trustee consent requirements in relation to the nomination (if any) are met.

- (b) **Basis of payment.** Subject to clauses 1.20.8(a), 1.20.8(c), 1.20.8(d), 4.4.4(f)(1), 4.5.4(f)(1), 4.5.5(e)(1) and 4.6.2, any benefit payable from the Fund on or after the death of a Member which under this Deed is not expressed to be payable to or for the benefit of some other specified person or persons must be paid or applied by the Trustee to or for the benefit of one or more of -
- (1) the Member's Dependants; and
 - (2) the Member's legal personal representatives,
- to the exclusion of the other or others of them and in the form, manner, proportions and subject to the conditions determined by the Trustee.
- (c) **No Dependants or legal personal representative.** If after such inquiries and such period as the Trustee considers appropriate the Trustee is unable to identify a Dependancy or legal personal representative of a deceased Member to its satisfaction,

the Trustee may pay or apply the benefit otherwise payable under clause 1.20.8(b) in any other manner permissible under the Relevant Law.

- (d) **Form of death benefit payable.** If a death benefit is payable to a Member's Dependant under clause 1.20.8(a) or 1.20.8(b), the Trustee may decide to pay that benefit as a lump sum or as a pension on such terms as the Trustee and that Dependant determine and as required by the Relevant Law.

1.20.9 Beneficiary under disability.

If it appears to the Trustee that a Beneficiary is under a legal disability or is unable for any reason to satisfactorily deal with an amount otherwise payable to the Beneficiary from the Fund, the Trustee may pay or apply the whole or part of any amount payable to the Beneficiary for or towards the maintenance, education, advancement or otherwise for the benefit of the Beneficiary in any form and manner and subject to any conditions determined by the Trustee, including without limitation by way of payment to a person who, in the opinion of the Trustee –

- (a) is a trustee for the Beneficiary, including without limitation a trustee of a separate trust established by the Trustee upon the trusts and with the Powers determined by the Trustee;
- (b) is a representative, Spouse, child, parent or guardian of the Beneficiary; or
- (c) has custody or care (or the financial expense of custody or care) of the Beneficiary.

1.20.10 Discharge of Trustee.

The Trustee is completely discharged (and released from any claim by any person) in respect of any application of assets of the Fund as a payment that is made in accordance with this Deed and the Trustee is not bound to see to the application of that amount.

1.20.11 Effect of compulsory or voluntary provision of benefits.

- (a) **Compulsory provision of benefits.** If, in the opinion of the Trustee, a benefit must be paid or commence to be paid from the Fund to or in respect of a Member upon the occurrence of a particular event or circumstance (notwithstanding that there is no actual termination or interruption of employment) in order to satisfy the Relevant Law:
- (1) the Trustee must pay or commence payment of that benefit in accordance with clause 1.20.2(b); and
 - (2) subject to any contrary agreement between the Trustee and the Principal Employer, for the purposes of determining the amount of or eligibility for payment of any benefit payable pursuant to this Deed in respect of an event or circumstances occurring or arising after the date the benefit is paid or commences to be paid, that Member must be treated for all intents and purposes under this Deed as if that Member had never previously been an Employee or a Member.
- (b) **Voluntary provision of whole benefit.** Subject to clause 1.20.11(c), if in the opinion of the Trustee, a benefit may be paid from the Fund in respect of a Member upon the Member attaining a particular age or upon the occurrence of a particular event or circumstance (notwithstanding that there is no actual termination or interruption of employment) without causing a breach of the Relevant Law:
- (1) the Trustee may pay that benefit in accordance with clause 1.20.2(a); and

- (2) subject to any contrary agreement between the Trustee and the Principal Employer, for the purposes of determining the amount of or eligibility for payment of any benefit payable pursuant to this Deed in respect of an event or circumstance occurring or arising after the date the benefit is paid, that Member must be treated for all intents and purposes under this Deed as if that Member had never previously been an Employee or a Member.
- (c) **Voluntary provision of part benefit.** If, in the opinion of the Trustee:
- (1) a benefit may be paid or commence to be paid from the Fund in respect of a Member upon the Member attaining a particular age or upon the occurrence of a particular event or circumstance (notwithstanding that there is no actual termination or interruption of employment) without causing a breach of the Relevant Law; and
- (2) payment of the benefit under clause 1.20.11(c)(1) does not extinguish the rights and interests of that Member (or the rights and interests of any person entitled to claim in respect of the Member) under this Deed,
- then:
- (3) the Trustee may pay or commence payment of that benefit in accordance with clause 1.20.2(a); and
- (4) the amount of any further benefit, in respect of an event or circumstance occurring or arising after the date the benefit under clause 1.20.11(c)(3) is paid or commenced to be paid, that is payable in respect of the Member pursuant to this Deed will be determined by the Trustee after obtaining the advice of the Actuary.

Part 1.21 Deductions and Forfeiture

1.21.1 Debts due to Fund or Trustee.

The Trustee may deduct from a Member's or Beneficiary's interest in the Fund or from any moneys which but for this clause 1.21.1 would be payable to or for the benefit of the Member or Beneficiary, and may retain in the Fund, any amount determined by the Trustee to be owing to the Trustee or the Fund by that Member or Beneficiary either solely or in conjunction with any other person on any account whatever, including without limitation -

- (a) an amount determined by the Trustee to be necessary to reimburse or compensate the Fund or the Trustee for loss or damage suffered as a result of the fraud, dishonesty or other misconduct of the Member or Beneficiary; and
- (b) interest at any rate and in respect of any period determined by the Trustee.

1.21.2 Conditions on benefit entitlements.

(a) Relevant conditions.

- (1) Except as permitted, expressly or by necessary implication, under the Relevant Law and without limiting part 1.2, no part of a person's interest or entitlement under this Deed is capable of being assigned to, or of becoming mortgaged, charged or otherwise encumbered in favour of, any other person.

(2) Subject to part 1.2, it is a condition precedent of a person being entitled to a benefit under this Deed that that person is, at all material times, an Entitled Person.

(b) **Alienation of benefits: protective trust.** If a person is not an Entitled Person by reason of that person falling within paragraph (a) of the definition of Entitled Person in clause 1.1.1, the Trustee must hold any benefit to which, but for the operation of this clause 1.21.2, that person would be entitled under this Deed upon trust to be paid or applied by the Trustee to or for the benefit of one or more of -

(1) that person;

(2) that person's Dependants; and

(3) if that person has died, any other person to whom payment may be made under clause 1.20.8,

to the exclusion of the other or others of them and in the proportions, manner and form, and subject to the trusts and conditions, determined by the Trustee. Without limiting the preceding words, in the exercise of its discretion under this clause in respect of a person, the Trustee may pay any part of a relevant benefit to another person who in the opinion of the Trustee -

(4) is a trustee for that person or a trustee for a Dependant of that person, including without limitation a trustee of a separate trust established for this purpose by the Trustee upon the trusts and Powers determined by the Trustee;

(5) is a representative, Spouse, child, parent or guardian of (or an executor or administrator of the estate of) that person or of a Dependant of that person; or

(6) has the custody or care (or the financial expense of the custody or care) of that person or a Dependant of that person.

(c) **Non-compliance with clause 1.20.6(a).** If a person is not an Entitled Person because of that person's failure to comply with clause 1.20.6(a) to the Trustee's satisfaction, the Trustee may apply any benefit to which, but for the operation of this clause 1.21.2, that person would be entitled under this Deed in any manner which is permissible under the Relevant Law and the Trustee considers appropriate, including without limitation in the manner provided in clause 1.20.6(c).

(d) **Discharge of Trustee.** The receipt of a person to whom the Trustee is authorised to pay an amount under this clause 1.21.2 is a complete discharge to the Trustee and the fact that a person is not an Entitled Person at the time an amount is paid to that person by the Trustee may not be asserted as a breach of duty by the Trustee and shall not result in any liability for the Trustee.

1.21.3 Consequential adjustments.

Subject to part 1.2 -

(a) the Trustee may adjust the rights, interests and obligations of any person (and of any other person otherwise entitled to claim in respect of that person or on the occurrence of an event or circumstance affecting that person) in the manner and to the extent the Trustee considers appropriate in taking account of clause 1.21.1 or clause 1.21.2; and

(b) if, having ceased to be an Entitled Person, a person subsequently becomes an Entitled Person, the Trustee may re-adjust any such right, interest or obligation in the manner, to

the extent and on the conditions the Trustee considers appropriate, but the Trustee is not under a duty to apply this paragraph (b), or to consider whether the Trustee should apply this paragraph, even if the Trustee has actual notice of a relevant matter.

Part 1.22 Employers: Miscellaneous Provisions

1.22.1 Employer's Powers not affected.

Nothing in this Deed prejudices the Powers of an Employer regarding the dismissal or remuneration of or any dealings whatever with any of its officers, employees or servants. Any benefit to which a person may be entitled under this Deed must not be used or alleged or claimed as damages or as grounds for increasing damages in any action or claim by or in respect of that person against an Employer in relation to the dismissal of or other dealings with that person by the Employer.

1.22.2 Employer's Powers.

Except to the extent otherwise expressly provided elsewhere in this Deed, in the exercise, non-exercise or partial exercise of each Power exercisable by it under this Deed, the Principal Employer or an Associated Employer has an absolute and uncontrolled discretion and is not subject to any fiduciary or like duty, obligation or standard.

1.22.3 Appointment of Receiver.

If a receiver, receiver and manager, liquidator or trustee in bankruptcy is appointed in respect of an Employer or the whole of the property of an Employer or if an Employer is placed under the official management of a person or a committee of management (collectively called "Receiver"), until the Receiver is discharged from or otherwise ceases to hold office all Powers exercisable by the Employer are exercisable by the Receiver and references in this Deed to that Employer are deemed to be references to the Receiver.

Part 1.23 Notices

1.23.1 Normal procedures.

A notice, cheque or other written matter (collectively called "notice" in this part 1.23) may be given to any person by:

- (a) handing it to that person personally; or
- (b) by leaving it at that person's address last known to the person giving the notice or by sending it to that address by ordinary prepaid post (including, in the case of a body corporate, the registered office or principal place of business of that body).

1.23.2 Other procedures.

Without limiting clause 1.23.1, a notice may also be given by the Trustee or an Employer to any person by way of any data or image transmission or communication facility or medium, including without limitation facsimile, electronic mail and other electronic medium.

1.23.3 Receipt of notices.

A notice is deemed to have been received -

- (a) in the case of a notice given by hand, at the time of delivery;
- (b) in the case of a notice given by post, at the expiration of 3 normal working days (in the location at which the notice is posted) after posting;
- (c) in the case of a notice given by way of a facility or medium falling within clause 1.23.2, when transmitted to the addressee (whether or not legibly received),

or, in any case, at any later date which the Trustee may determine to be appropriate in the circumstances.

Part 1.24 Portability of Benefits

1.24.1 Rollovers and transfers into the Fund.

- (a) The Trustee may arrange for the rollover or transfer into the Fund of the benefits of a member of another Approved Benefit Arrangement.
- (b) An arrangement mentioned in clause 1.24.1(a) may be between the Trustee and:
 - (1) the member of the other Approved Benefit Arrangement; or
 - (2) the trustee or administrator of the other Approved Benefit Arrangement.
- (c) The Trustee may accept a transfer of a benefit into the Fund by way of a Successor Fund Transfer and admit the person in respect of whom the benefit is transferred as a Member.

1.24.2 Rollovers and transfers out of the Fund (and between divisions).

- (a) The Trustee:
 - (1) may, with or without the consent of a Beneficiary, transfer all or part of the benefits of the Beneficiary:
 - (A) from the Fund to another Approved Benefit Arrangement; or
 - (B) subject to clause 1.24.2(b), between divisions of the Fund; and
 - (2) must transfer all or part of the benefits of a Beneficiary from the Fund to another Approved Benefit Arrangement in the circumstances required by the Relevant Law.
- (b) Benefits of a Beneficiary may only be transferred from division 2 or division 5 to another division of the Fund with the consent of the Beneficiary, unless the benefits are being transferred in connection with the application of Part 1.19.
- (c) The Trustee may transfer a Member's benefit from the Fund by way of a Successor Fund Transfer, without the Member's consent.

1.24.3 Compulsory - transfer of defined benefit Member to division 6 following choice of fund election.

Subject to part 1.2 and clause 1.24.6, in respect of an Employed Member who is a member of division 2 or division 5, if in accordance with this Deed all contributions by the Member's Employer in respect of the Member have ceased in accordance with clause 1.19.1 because the

Member is, or is eligible to become, a participant in another Approved Benefit Arrangement as a result of making a “choice of fund” election under the SG Act, then the Trustee must –

- (1) cause the Member’s benefit under division 2 or division 5 (as applicable) to be calculated (as if the Member had ceased to be an Employee) (“**Withdrawal Benefit**”); and
- (2) without obtaining the consent of the Member, cause that Withdrawal Benefit to be credited to a Member’s Account which the Trustee will establish for the Member under division 6; and
- (3) upon that Withdrawal Benefit being transferred or credited in accordance with clause 1.24.3(2), the Member’s right or claim to any benefit under division 2 or division 5 (as applicable) is extinguished,

but the Trustee must refrain from making a transfer under this clause 1.24.3 if and for so long as the Trustee considers it is necessary to do so in order to comply with any applicable requirement of a Relevant Law.

1.24.4 Compulsory – automatic transfer of Employed Member’s benefits after cessation of employment.

Subject to part 1.2, clause 1.14.6 and clause 1.24.6 and any contrary agreement between the Trustee and Principal Employer, if a Member ceases to be an Employee and becomes entitled to a benefit under the relevant division, the Trustee may, without obtaining the consent of the Member, cause the value of that benefit to be transferred to:

- (1) division 4 of the Fund; or
- (2) an Approved Benefit Arrangement approved by the Trustee; or
- (3) any other division of the Fund, provided that the Member is, or is about to be, employed by an Employer which makes contributions to that division.

1.24.5 Compulsory – general provision for transfer of Beneficiary’s benefit in absence of payment instructions.

Subject to part 1.2, clause 1.24.6 and any contrary agreement between the Trustee and Principal Employer, if a Beneficiary does not take all steps which, in the opinion of the Trustee, are reasonably necessary in order to ensure that the value of the benefit payable to the Beneficiary (including without limitation any deferred or preserved benefit), is transferred to an Approved Benefit Arrangement or to the relevant division of the Fund, the Trustee may, without obtaining the consent of the Beneficiary, cause the value of that benefit to be transferred to:

- (1) division 4 of the Fund; or
- (2) an Approved Benefit Arrangement approved by the Trustee; or
- (3) any other division of the Fund, provided that the Beneficiary is, or is about to be, employed by an Employer which makes contributions to that division.

1.24.6 General provisions concerning transfers.

- (a) **Method of transfers out.** The Trustee may effect a payment or transfer from the Fund under clause 1.24.2 by way of payment of money or transfer of assets.
- (b) **Transfers of Employed Members between divisions.** Subject to part 1.2, clause 1.14.6(b) and this clause 1.24.6, if an Employed Member who is a member of one division (“**former division**”) becomes a member of another division (“**new division**”), then the Trustee must cause an amount equal to the Member’s withdrawal benefit under the former division to be credited to an account for the Member under the new division and upon that amount being credited, the Member’s right or claim to any benefit under the former division is extinguished.
- (c) **Effect of transfer on benefits.**
 - (1) Unless otherwise agreed between the Principal Employer and the Trustee -
 - (A) upon payment or transfer from the Fund of a Member’s or Beneficiary’s Fund Interest in accordance with clause 1.24.2, all of the rights and interests of that Member or Beneficiary under this Deed (and all of the rights and interests of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstance affecting the Member or Beneficiary) are extinguished; and
 - (B) upon payment or transfer from the Fund in accordance with clause 1.24.2 of the whole of the value of a benefit otherwise payable from the Fund to or in respect of a Member or Beneficiary, all of the rights and interests of that Member or Beneficiary under this Deed in respect of that benefit are extinguished.
 - (2) In the case of a payment or transfer from the Fund in respect of a Member or Beneficiary in accordance with clause 1.24.2 which does not fall within clause 1.24.6(c)(1), the rights and interests of that Member or Beneficiary under this Deed (and the rights and interests of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstance affecting the Member or Beneficiary) are extinguished or adjusted in the manner and to the extent the Trustee and the Principal Employer, after obtaining the advice of the Actuary, agree to be appropriate and equitable in taking account of that payment or transfer.

Part 1.25 Amendment Powers and Procedures

1.25.1 Amendments to comply with Relevant Law.

Subject to clause 1.25.3, the Principal Employer and the Trustee may by deed or by oral or written resolution (including in either case a resolution of its Board) amend, add to, revoke or replace all or any of the trusts and provisions of this Deed (including without limitation this part 1.25) in order to comply with any applicable requirement of a Relevant Law.

1.25.2 Other amendments.

Subject to clause 1.25.3, the Principal Employer by deed or by oral or written resolution (including without limitation a resolution of the Board) may amend, add to, revoke or replace all or any of the trusts and provisions of this Deed (including without limitation this part 1.25) as the

Principal Employer sees fit but no such amendment, addition, revocation or replacement (collectively called an “amendment”) shall -

- (a) in the case of an amendment to which the consent of the Trustee is required under a Relevant Law, be made without the consent of the Trustee; and
- (b) in any case, take effect in respect of a Member or Beneficiary unless -
 - (1) the Actuary certifies that that amendment will not reduce the amount of any benefit presently or prospectively payable in respect of the Member or Beneficiary to the extent that that benefit has accrued in respect of the period up to the date the relevant deed is executed or the relevant resolution is made;
 - (2) that amendment is approved in writing by the Regulator; or
 - (3) that amendment is approved in writing by that Member or Beneficiary,

and, for the avoidance of doubt, it is expressly provided that the trusts and provisions of this Deed may be entirely replaced by amendments made in accordance with this clause 1.25.2.

1.25.3 Restrictions on amendments.

- (a) **Requirements of Supervision Act.** The Supervision Act contains conditions concerning the amendment of the governing rules of superannuation schemes, which must be complied with when making amendments under this part 1.25. In particular, no amendment may be made under this part 1.25 which is prohibited under the Supervision Act.
- (b) **Requirement to consult with Union Council.** Before exercising any Power exercisable by the Principal Employer under clause 1.25.2, the Principal Employer will consult with the Union Council with a view to reaching agreement.
- (c) **Division 5.** In the case of:
 - (1) a Member who is for the time being categorised as a member of division 5 of the Fund; and
 - (2) any other person entitled to claim in respect of that Member,(each called a “Protected Person”), no amendment, addition, revocation or replacement may be made under clause 1.25.2 which would:
 - (3) alter adversely a Protected Person’s right to claim or receive a benefit, or the manner of calculation of a benefit, under the provisions of division 5 of this Deed in force on the date the member of division 5 was last categorised as a member of division 5;
 - (4) alter clause 5.1.1(c); or
 - (5) increase the obligation of the member of division 5 to contribute to the Fund,unless the Trustee consents to that amendment, addition, revocation or replacement.

1.25.4 Effective date of amendments.

Any amendment, addition, revocation or replacement made in accordance with this part 1.25 takes effect on the effective date specified in the relevant deed or resolution or, if no date is so specified, the date of that deed or resolution.

Part 1.26 Reserve Account

1.26.1 Establishment.

The Trustee may establish in respect of the Fund in accordance with this part 1.26 one or more accounts to be called the Reserve Account.

1.26.2 Credits and debits to Reserve Account.

There will be credited to the Reserve Account:

- (a) any amount which in accordance with clause 1.20.6 or part 1.21 is debited to a Member's account and which is not otherwise applied in accordance with those provisions;
- (b) any bonus, refund or rebate paid to the Fund in respect of Group Life Insurance effected under this Deed; and
- (c) any other amounts which this Deed may require to be credited to the account or which the Trustee may determine to credit to the account,

and there will be debited to the Reserve Account:

- (d) any amount to be debited to the account in accordance with clause 1.26.3; and
- (e) any amounts which the Trustee may determine to debit to the account in respect of Tax, Fund Expenses or Group Life Insurance; and
- (f) any other amounts which this Deed may require to be debited to the account or which the Trustee may determine to debit to the account,

and investment earnings at the Declared Rate will be periodically allocated to the Reserve Account (by credit or debit, as the case may require).

1.26.3 Application of credit balance in Reserve Account.

- (a) **Payments from Reserve Account.** The Trustee may debit amounts to the Reserve Account for any purpose which the Trustee may consider to be appropriate and in accordance with the Relevant Law, including without limitation in order to:
 - (1) increase a Member's Fund Interest; and
 - (2) pay Tax, Fund Expenses or the costs of Group Life Insurance.
- (b) **Investment fluctuation reserve.** The Trustee may maintain an unallocated credit balance in the Reserve Account for the purpose of reducing fluctuations in the rates of investment earnings allocated to the accounts of the Fund from time to time but the Trustee must ensure that the credit balance at any time does not exceed an amount which would cause the Fund to be in breach of or to fail to comply with an applicable requirement of the Relevant Law.

**DIVISION 2
DEFINED BENEFIT PLAN**

**Part 2.1
Application and Interpretation**

2.1.1 Application of division 2.

- (a) This division 2 is always subject to division 1 of this Deed, and division 1 prevails over this division 2 to the extent of any conflict.
- (b) This division 2 only applies to and in respect of a member of the Fund who is for the time being categorised as a Member of this division 2.

2.1.2 Definitions.

In this division 2, unless the contrary intention appears or the context requires otherwise:

“Accrued Benefit Multiple” means in relation to a Member as at any particular date the multiple which is the sum of -

- (a) the lesser of the Member’s Fund Multiple and the Member’s Constant 5% Multiple;
- (b) the Member’s Excess Contributions Multiple, if any; and
- (c) in the case of a Former CSS Member, the sum of -
 - (1) the product of 0.20 and the Member’s Credited CSS Service; and
 - (2) the Member’s Supplementary CSS Multiple, if any.

“Accrued Retirement Benefit” means in relation to a Member as at any particular date the product of the Member’s Accrued Benefit Multiple and the Member’s Final Average Salary.

“Accumulation Contributions” means the contributions the Member or the Member’s Spouse has selected or is deemed to have selected for the time being in accordance with clause 2.2.5.

“Constant 5% Multiple” means in relation to a Member as at any particular date the product of 0.20 and the number of years (and any fraction of a year not forming part of a complete year) of Division 2 Membership completed by the Member.

“Date of Disablement” means in relation to a Member who is or was Totally and Permanently Disabled -

- (a) if the Member has ceased to be an Employee because of Total and Permanent Disablement – the date determined by the Trustee to be the date on which the Member last ceased to be an Employee; or
- (b) such other date as determined by the Trustee.

“Defined Benefit Contribution Rate Option” means 0%, 1%, 2%, 3%, 4%, 5%, 6%, 7%, 8%, 9% or 10% of Salary (or any other percentage of Salary agreed between the Trustee and the Principal Employer from time to time either generally or in any particular case) and, when used in relation to a Member, means whichever of the permitted percentages the Member has selected or is deemed to have selected for the time being in accordance with clause 2.2.1.

“Excess Contributions Multiple” means in relation to a Member whose Fund Multiple is greater than the Member’s Constant 5% Multiple the multiple determined in accordance with the following formula -

$$\text{Excess Contributions Multiple} = \frac{(\text{FM} - \text{CM5})}{2.4}$$

Where:

“CM5” is the Member’s Constant 5% Multiple; and

“FM” is the Member’s Fund Multiple.

“Final Average Salary” means in relation to a Member the average of the Member’s annual rate of Salary as at the Salary Review Dates falling within the period of 3 years of Superannuation Membership immediately preceding the date the Member ceases to be an Employee (or the actual period of Superannuation Membership immediately preceding that date, if less than 3 years) but, subject to part 1.2 and clause 1.16.5, by written notice given to the Trustee the Principal Employer may specify that the Final Average Salary of a Member or a class of Members is to be another amount or calculated in another manner either indefinitely or for a specified period and for the purposes of the whole or any particular provision of this Deed.

“Fund Multiple” means in relation to a Member as at any particular date the multiple which is equal to the sum, for all values of C, of the amount calculated in accordance with the following formula -

$$\text{Fund Multiple} = [0.08 + (2.4 \times C)] \times \text{FMC}$$

Where:

“C” is a particular Defined Benefit Contribution Rate Option which has applied in respect of the Member during the Member’s Division 2 Membership in accordance with part 2.2; and

“FMC” is the aggregate period of Division 2 Membership during which the “C” Defined Benefit Contribution Rate Option applied in respect of the Member in accordance with part 2.2.

“Member” means an Employee who is categorised by the Principal Employer as a Member of this division 2.

“Member Financed Benefit” means in relation to a Member as at any particular date the greater of the total of the Member’s own contributions to the Fund under clause 2.2.1 and the amount determined in accordance with the following formula -

$$\text{Member Financed Benefit} = \text{FAS} \times (\text{FCM} + \text{CM})$$

Where:

“FAS” is the Member’s Final Average Salary;

“FCM” is the sum, for all values of C, of the product of C and FMC, where C and FMC have the same meanings as in the definition of Fund Multiple; and

“CM” is, in the case of a Former CSS Member, the multiple which is the sum of -

- (a) the product of 0.05 and the number of years (and any fraction of a year not forming part of a complete year) of Credited CSS Service completed by the Member; and
- (b) the Member’s Supplementary CSS Multiple, if any.

“**Other Division Benefit**” means in relation to an Other Division Member in any particular circumstances and in relation to any other division (“Relevant Other Division”) -

- (a) the benefit determined at the date the Other Division Member ceases to be an Employee as if that Member had ceased to be an Employee under the Relevant Other Division in the same (or what the Trustee determines to be the closest equivalent) circumstances but ignoring -
 - (1) any period when that Member was classified as a member of any division other than the Relevant Other Division; and
 - (2) any benefits accrued or accumulated under any division other than the Relevant Other Division; or
- (b) any other benefit determined, as agreed between the Trustee and the Principal Employer from time to time upon the advice of the Actuary, either generally or in any particular case.

“**Other Division Member**” means a Member who at any time during Superannuation Membership has been classified as a member of any division other than this division 2.

“**Salary**” is determined in respect of a Member as at each Salary Review Date and a Member’s Salary as at any particular date is the Salary notified to the Trustee by the Employer as at the coincident or immediately preceding Salary Review Date, but -

- (a) subject to any contrary agreement between the Member and the Employer (with the approval of the Principal Employer where it is not the Member’s Employer) and to paragraph (b) below -
 - (1) a Member’s Salary as at any particular Salary Review Date during Division 2 Membership will not be less than the Salary which applied to the Member as at any preceding Salary Review Date during Division 2 Membership; and
 - (2) a Member’s Salary as at a Salary Review Date falling during a period of Division 2 Membership when the Member is absent from active employment with the Employer without pay is the Salary which would have applied in respect of the Member as at that Salary Review Date if the Member had then been actively employed in the position held by the Member with the Employer immediately before the commencement of that period of absence;

and

- (b) subject to part 1.2 and clause 1.16.5, by written notice given to the Trustee the Principal Employer may specify that the Salary of a Member or a class of Members is to be another amount or calculated in another manner either indefinitely or for a specified period and for the purposes of the whole or any particular provision of this Deed.

“Salary Review Date” means in relation to a Member -

- (a) each of the Member’s birthdays during the Member’s Superannuation Membership; and
- (b) in the case of a Member whose Superannuation Membership commences on a day which is not the Member’s birthday and whose Superannuation Membership does not include at least one birthday, the date on which the Member’s Superannuation Membership commenced,

or any other date or dates agreed between the Trustee and the Principal Employer from time to time either generally or in any particular case. In the case of a Member who was born on 29 February in a leap year, the Member’s birthday in each non-leap year shall be deemed to be 1 March.

“Supplementary CSS Multiple” means in relation to a Former CSS Member who paid supplementary contributions to the Commonwealth Superannuation Scheme during the Member’s Credited CSS Service, the multiple obtained by dividing (a) by (b), where -

“(a)” is the amount of the Member’s supplementary contributions to the Commonwealth Superannuation Scheme during the Member’s Credited CSS Service accumulated with interest up to the date the Member became a member of the Fund at the rate or rates applicable for the relevant purposes under the Commonwealth Superannuation Scheme, as notified to the Trustee by the Principal Employer; and

“(b)” is the Member’s Final Average Salary as at the date of becoming a member of the Fund.

“Total and Permanent Disablement” in relation to a Member:

- (a) has the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) in any policy of insurance effected by the Trustee; or
- (b) if no policy of insurance is in force in relation to the Member, means permanent incapacity as defined in the Supervision Act,

and **“Totally and Permanently Disabled”** has a corresponding meaning.

“Voluntary Account” means in relation to a Member the account maintained in respect of the Member in accordance with part 2.4.

“Voluntary Account Balance” means in relation to a Member as at any particular date the credit balance (if any) in the Member’s Voluntary Account after all relevant credits and debits have been made to that account.

2.1.3 Membership.

Subject to clause 1.24.2, in the case of a Member who at any time since last becoming a member of the Fund was categorised as a member of another division, except for determining and applying the definition of Other Division Benefit as expressly provided in this division 2, the period when that Member was categorised as a member of another division, and any benefits accumulated or accrued under another division shall not be taken into account under this division 2.

Part 2.2 Contributions

2.2.1 Defined Benefit Contribution Rate Options.

A Member must contribute to the Fund during the Member's Division 2 Membership at whichever of the permissible Defined Benefit Contribution Rate Options is selected or deemed to be selected by the Member in accordance with this part 2.2.

2.2.2 Initial selection of Defined Benefit Contribution Rate Option.

Subject to clause 2.2.4, upon first becoming a Member of division 2, a Member must select which of the permissible Defined Benefit Contribution Rate Options is to apply to the Member with effect from the commencement of Division 2 Membership. Unless otherwise agreed between the Member, the Trustee and the Principal Employer, a Member who does not make an effective selection when first eligible to do so is deemed to have initially selected the 0% Defined Benefit Contribution Rate Option.

2.2.3 Change of Defined Benefit Contribution Rate Options.

Subject to clause 2.2.4, a Member may change the Member's rate of contributions by selecting another of the permissible Defined Benefit Contribution Rate Options which the Member wishes to apply with effect from the first day of the pay period which commences on or next follows the date the Employer receives the Member's selection form.

2.2.4 Permitted selection method.

A Member's selection of the applicable Defined Benefit Contribution Rate Option is effective only if made by the Member in writing in a form agreed between the Trustee and the Employer and received by the Employer.

A selection which does not satisfy these conditions is void.

2.2.5 Voluntary Accumulation Contributions.

In addition to any contributions which a Member makes under clause 2.2.1, a Member and the Member's Spouse may make additional voluntary Accumulation Contributions to the Fund as the Trustee approves from time to time.

2.2.6 Employer Contributions.

The Employer may, and must as agreed with the Member, contribute to the Fund any additional amount which the Employer may determine either generally or in respect of any particular Member.

Part 2.3 Benefits: Amount and Circumstances of Payment

2.3.1 Retirement benefits.

If -

- (a) a Member ceases to be an Employee on or after attaining age 55; or
- (b) subject to clause 1.20.11, a Member has not ceased to be an Employee, but the Trustee is satisfied that a benefit may be paid under this clause 2.3.1 without causing the Fund

to be in breach of or to fail to comply with any applicable requirement of the Relevant Law,

and no benefit is payable under clause 2.3.2, 2.3.3, 2.3.4 or 2.3.6, there is payable to the Member from the Fund a lump sum benefit of an amount equal to the sum of -

- (c) the Member's Accrued Retirement Benefit; and
- (d) the Member's Voluntary Account Balance, if any; and
- (e) the Member's Other Division Benefit, if any.

2.3.2 Death benefits.

If a Member dies:

- (a) while an Employee during a period of Division 2 Membership; or
- (b) within 30 days of ceasing to be an Employee, subject to any conditions determined by the Trustee from time to time either generally or in any particular case,

there is payable in respect of the Member in accordance with clause 1.20.8 a lump sum benefit of an amount equal to the sum of -

- (c) the Member's Accrued Retirement Benefit as at the date of death; and
- (d) if the Member dies before attaining the age of 60 years, the amount determined in accordance with the formula $FAS \times 0.20 \times FM60$, where -

"FAS" is the Member's Final Average Salary as at the date of death; and

"FM60" is the number of years (and any fraction of a year not forming part of a complete year) between the date of death and the 60th anniversary of the Member's date of birth; and

- (e) the Member's Voluntary Account Balance, if any; and
- (f) the Member's Other Division Benefit, if any.

2.3.3 Total and Permanent Disablement benefits.

If a Member suffers Total and Permanent Disablement, there is payable to the Member from the Fund a lump sum benefit of an amount equal to the benefit which would have been payable under clause 2.3.2 if the Member had died on the Date of Disablement or any other date agreed between the Trustee and the Principal Employer from time to time either generally or in any particular case.

2.3.4 Retrenchment.

- (a) **Categories of Members.** For the purposes of this clause 2.3.4, Members who cease to be Employees in circumstances where no benefit is payable under clause 2.3.2, clause 2.3.3 or clause 2.3.6 shall be divided into 2 categories, namely -

- (1) "Retrenched Members", being Members who are categorised by the Principal Employer by written notice to the Trustee as having ceased to be Employees in circumstances which constitute retrenchment; and

(2) Members who are not so categorised and to whom clause 2.3.4(b) does not apply.

(b) **Benefits for Retrenched Members.** If a Member becomes a Retrenched Member there shall be payable to the Retrenched Member a lump sum benefit of an amount equal to the sum of -

- (1) the Member's Accrued Retirement Benefit; and
- (2) the Member's Voluntary Account Balance, if any; and
- (3) the Member's Other Division Benefit, if any.

2.3.5 Withdrawal benefits.

(a) **Circumstances of Payment.** Subject to part 2.4, if a Member ceases to be an Employee in circumstances where no benefit is payable under any other provision of this division 2, there is payable to the Member from the Fund a lump sum benefit equal to the sum of -

- (1) an amount determined as at the date the Member ceases to be an Employee in accordance with whichever of clause 2.3.5(b), clause 2.3.5(c) or clause 2.3.5(d) applies, depending upon the period of Superannuation Membership completed by the Member; and
- (2) the Member's Voluntary Account Balance, if any; and
- (3) the Member's Other Division Benefit, if any.

(b) **Less than 3 months of Superannuation Membership.** If the Member has completed less than 3 months of Superannuation Membership, an amount equal to the Member's Member Financed Benefit is payable.

(c) **At least 3 months but less than 60 months of Superannuation Membership.** If the Member has completed at least 3 months of Superannuation Membership but less than 60 months of Superannuation Membership, the amount payable is the amount determined in accordance with the following formula -

$$\text{Benefit} = \text{FAS} \times [(0.40 \times A) + B + C]$$

Where:

"A" is the Member's Accrued Benefit Multiple less B;

"B" is the sum of the Member's Excess Contributions Multiple, if any, and the Member's Supplementary CSS Multiple, if any;

"C" is the greater of zero (0) and the multiple determined in accordance with the formula $0.15 \times (\text{SM}-1) \times A$;

"FAS" is the Member's Final Average Salary; and

"SM" is the number of years (and any fraction of a year not forming part of a complete year) of Superannuation Membership completed by the Member.

- (d) **60 months or more of Superannuation Membership.** If the Member has completed 60 months or more of Superannuation Membership, an amount equal to the Member's Accrued Retirement Benefit is payable.

2.3.6 Terminal Illness Benefit.

- (a) If a Member suffers a terminal medical condition within the meaning of the Supervision Regulations there is payable to the Member from the Fund a lump sum benefit of an amount equal to the benefit which would have been payable under clause 2.3.2 if the Member had died on the date the benefit payable under this clause 2.3.6 is paid.
- (b) Following the payment of a benefit under this clause 2.3.6:
 - (i) clause 1.20.11 (b)(2) applies; and
 - (ii) the Member's right or claim to any further benefit under division 2 is extinguished.

Part 2.4 Voluntary Account

2.4.1 Maintenance of account.

The Trustee must cause to be maintained in respect of each Member:

- (a) who makes Accumulation Contributions pursuant to clause 2.2.5; or
- (b) for whom the Trustee determines to establish an accumulation account,

an account to be called the Voluntary Account.

2.4.2 Credits and debits.

There shall be credited to a Member's Voluntary Account -

- (a) the contributions made by or in respect of the Member under clause 2.2.5;
- (b) any contributions made by the Principal Employer under clause 2.2.6 or because of an arrangement under part 1.16 which provides for a credit to be made to the Member's Voluntary Account;
- (c) any amounts transferred in respect of the Member from another division of the Fund;
- (d) any amount transferred in respect of the Member from an Approved Benefit Arrangement in accordance with this Deed and which the Trustee determines to credit to the Voluntary Account;
- (e) any amount that the Member elects to transfer to the Member's Voluntary Account that is a "transitional termination payment" (within the meaning of the Tax Act) payable in respect of the Member from an employer;
- (f) investment earnings at the Declared Rate (if positive);
- (g) any contributions made in respect of the Member as an Eligible Spouse;
- (h) any Insurance Benefit; and

- (i) any other amounts which this Deed may require to be credited to the Voluntary Account or which the Trustee and the Principal Employer agree to credit to the Voluntary Account,

and there shall be debited to the Member's Voluntary Account -

- (j) any amounts transferred in respect of the Member to an Approved Benefit Arrangement in accordance with this Deed and which the Trustee determines to debit to the Voluntary Account;
- (k) any amounts transferred to another division of the Fund;
- (l) any benefit payable from the Voluntary Account;
- (m) any amounts which the Trustee may determine to debit in respect of Tax, Fund Expenses and Group Life Insurance;
- (n) investment earnings at the Declared Rate (if negative); and
- (o) any other amounts which this Deed may require to be debited to the Voluntary Account or which the Trustee and the Principal Employer agree to debit to the Voluntary Account.

DIVISION 4

Part 4.1 Application and Interpretation

4.1.1 Application of division 4.

- (a) This division 4 is always subject to division 1 of this Deed, and division 1 prevails over this division 4 to the extent of any conflict.
- (b) This division 4 only applies to and in respect of a member of the Fund who is for the time being categorised as a Member of this division 4.

4.1.2 Definitions.

In this division 4, unless the contrary intention appears or the context requires otherwise:

“AB Pension Account” means, in relation to an Account Based Pensioner, the account of that name maintained in respect of the Account Based Pensioner in accordance with clause 4.4.2.

“AB Pension Account Balance” means, in relation to an Account Based Pensioner, as at any particular date, the credit balance (if any) in the Account Based Pensioner’s AB Pension Account, after all relevant credits and debits have been made to that account.

“Account Based Pension” means an income stream paid or payable from the Fund that is classified by the Trustee as an Account Based Pension.

“Account Based Pensioner” means a Member who is receiving an Account Based Pension under part 4.4.

“Allocated Pension” means a benefit payable from the Fund as an income stream which commenced before 1 July 2007 and is classified by the Trustee as an Allocated Pension.

“Allocated Pensioner” means a Member who is receiving an Allocated Pension under part 4.5.

“Complying Pension” means an income stream issued from the Fund that the Trustee intends to be a pension for the purposes of the Supervision Act, other than an Account Based Pension, Allocated Pension or Term Allocated Pension.

“Default Fund Member” means a member of the Fund who is categorised by the Trustee as a Default Fund Member under clause 4.1.5.

“Division 4 Account” means in relation to a Member the account of that name maintained in respect of the Member in accordance with part 4.2.

“Division 4 Account Balance” means in relation to a Member (other than an Account Based Pensioner, Allocated Pensioner, Term Allocated Pensioner and a Complying Pensioner) as at any particular date the credit balance (if any) in the Member’s Division 4 Account, after all relevant credits and debits have been made to that account.

“Division 4 MySuper Member” means a Member of this division 4 who is a MySuper Member.

“Family Law Member” means a member of the Fund as determined in accordance with clause 4.1.3.

“Member” means a member of the Fund who is categorised as a Member of this division 4 and includes without limitation:

- (a) a Pensioner;
- (b) a Reversionary Beneficiary;
- (c) a Family Law Member;
- (d) a Personal Member; and
- (e) a Default Fund Member.

“Pension Account” means, in relation to an Allocated Pensioner or a Term Allocated Pensioner, the account of that name maintained in respect of the Allocated Pensioner or Term Allocated Pensioner in accordance with clause 4.5.2.

“Pension Account Balance” means, in relation to an Allocated Pensioner or a Term Allocated Pensioner as at any particular date, the credit balance (if any) in the Allocated Pensioner’s or Term Allocated Pensioner’s Pension Account, after all relevant credits and debits have been made to that account.

“Reversionary Beneficiary” means one or more Dependants to whom an Account Based Pension, Allocated Pension or Term Allocated Pension is paid, or becomes payable, following the death of an Account Based Pensioner, Allocated Pensioner or Term Allocated Pensioner.

“Reversionary Pension Nomination” means a nomination under clause 4.4.6 or 4.5.7 (as applicable) that has not been revoked and that remains valid and in effect on the date of the death of the Member who made the nomination.

“Term Allocated Pension” means a benefit payable from the Fund as an income stream which commenced before 20 September 2007 and is classified by the Trustee as a Term Allocated Pension.

“Term Allocated Pensioner” means a Member who is receiving a Term Allocated Pension under part 4.5.

“Total and Permanent Disablement” in relation to a Member:

- (a) has the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) in any policy of insurance effected by the Trustee; or
- (b) if no policy of insurance is in force in relation to the Member, means permanent incapacity as defined in the Supervision Act,

and **“Totally and Permanently Disabled”** has a corresponding meaning.

“Total Disability” in relation to a Member who has elected relevant cover in accordance with the terms and conditions determined by the Trustee shall have the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) for the purposes of any policy of insurance effected or acquired by the Trustee pursuant to the Deed and under which insurance is or may become payable in the event of the disablement of any Member or group of Members (or, where there is more than one policy in force, the policy specified by the Trustee for this purpose), and **“Totally Disabled”** shall have a corresponding meaning.

4.1.3 Family Law Member.

A person (who is not otherwise a member of the Fund) will be a Family Law Member if the Trustee has accepted an application (in a form approved by the Trustee and in accordance with

the Relevant Law) for that person's admission to the Fund as a result of the splitting of a member of the Fund's interest in the Fund following a valid family law arrangement.

4.1.4 Admission of Personal Members.

An Eligible Person will become a Personal Member if the Trustee has accepted an application in accordance with clause 1.14.1(a) for that person's admission to the Fund as a Personal Member of this division 4.

4.1.5 Admission of Default Fund Members.

An Eligible Employee will become a Default Fund Member:

- (a) if a Division 4 Employer that has nominated the Fund as the Division 4 Employer's eligible choice fund (as defined in the SG Act) makes a contribution to the Fund in respect of the Eligible Employee; or
- (b) in any other circumstance permitted by Relevant Law which the Trustee approves (either generally or in any particular case).

Part 4.2 Division 4 Account

4.2.1 Establishment.

- (a) The Trustee must cause to be maintained in respect of each Member (other than an Account Based Pensioner, Allocated Pensioner, Term Allocated Pensioner and a Complying Pensioner, subject to clause 4.2.1(b)) in accordance with this part 4.2 an account to be called the Division 4 Account.
- (b) A Division 4 Account may be maintained in respect of a Member who is an Account Based Pensioner, Allocated Pensioner, Term Allocated Pensioner or a Complying Pensioner for purposes of receiving any amount in respect of the Member, including without limitation an Insurance Benefit, a contribution or an amount to be transferred to this division 4, if such an amount becomes payable after the relevant pension has commenced to be paid.

4.2.2 Credits and debits.

There shall be credited to a Member's Division 4 Account:

- (a) any contributions made in accordance with clause 4.3.1;
- (b) any amount transferred from an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to credit to the account;
- (c) any amount transferred from another division of the Fund or from the Member's Pension Account;
- (d) any Insurance Benefit;
- (e) investment earnings at the Declared Rate (if positive);
- (f) any amount which the Trustee determines to credit to a Division 4 MySuper Member's Division 4 Account; and

- (g) any other amounts which this Deed may require to be credited to the Division 4 Account or which the Trustee may determine to credit to the Division 4 Account,

and there shall be debited to the Member's Division 4 Account:

- (h) any amounts which the Trustee may determine to debit in respect of Tax, Fund Expenses and Group Life Insurance;
- (i) any amount transferred to another division of the Fund or to the Member's Pension Account;
- (j) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the Division 4 Account;
- (k) any benefit attributable to the Division 4 Account;
- (l) investment earnings at the Declared Rate (if negative);
- (m) any amount which the Trustee determines to debit to a Division 4 MySuper Member's Division 4 Account; and
- (n) any other amounts which this Deed may require to be debited to the Division 4 Account or which the Trustee may determine to debit to the Division 4 Account.

Part 4.3

Contributions and Benefits from Division 4 Account

4.3.1 Contributions, rollovers and transfers.

The Trustee may (but is not obliged to) accept into the Fund any contribution, rollover or transfer in respect of a Beneficiary that Relevant Law permits the Trustee to accept.

4.3.2 Benefits.

(a) Lump sum benefits.

- (1) **Death.** On the death of a Member, there is payable in respect of the Member from the Fund in accordance with clause 1.20.8, an amount equal to the Member's Division 4 Account Balance.
- (2) **Total and Permanent Disablement:** if a Member suffers Total and Permanent Disablement, there is payable to the Member from the Fund a lump sum equal to the Member's Division 4 Account Balance.
- (3) **Other benefits.** The Trustee may at any time at the request of the Member pay all or any part of the Member's Division 4 Account Balance in accordance with Relevant Law.

(b) Pension benefits. Subject to terms and conditions as the Trustee may prescribe and subject to the Trustee's approval:

- (1) a Member may elect, in lieu of being paid a lump sum under clause 4.3.2(a), that all or part of the Member's Division 4 Account Balance:
 - (A) be credited to the Member's AB Pension Account to provide an Account Based Pension under part 4.4; or

- (B) be used to provide a Complying Pension under part 4.6;
- (2) a Member or an Eligible Person may elect, pursuant to clauses 1.24.2(a)(1)(B) and 1.14.1(a) respectively, that:
 - (A) an amount or amounts be credited to the Member's AB Pension Account to provide an Account Based Pension under part 4.4; or
 - (B) an amount or amounts to be used to provide a Complying Pension under part 4.6.
- (c) **Income protection benefit.** If a Member becomes Totally Disabled while an Employee, an income protection benefit is payable to the Member in accordance with and subject to the terms of the relevant policy of insurance.

4.3.3 Re-employment and other matters.

- (a) If a Member becomes an Employed Member (except where the Member is employed by a Division 4 Employer), the Member will become a member of a division of the Fund that is determined by the Principal Employer.
- (b) Depending on what division is applicable under clause 4.3.3(a), all or part of the Member's Division 4 Account Balance will, upon the Member so electing in the manner determined by the Trustee, be credited to the relevant Member account under the relevant division. If all of the Member's Division 4 Account Balance is so credited, the Member's right or claim to any benefit under this division 4 is extinguished.
- (c) Subject to clauses 4.3.3(a) and 4.3.3(b), a Member may also be a member of another division of the Fund while a Member of this division 4. In that event, any benefit payable from this division 4 shall be paid in accordance with this division and any benefit payable from another division shall be paid in accordance with that division.
- (d) A Member may have both a Division 4 Account and a Pension Account. In that event, the Member's Division 4 Account Balance shall be paid in accordance with part 4.3 and the Member's Pension Account Balance shall be paid in accordance with part 4.5.
- (e) A Member may have both a Division 4 Account and an AB Pension Account. In that event, the Member's Division 4 Account Balance shall be paid in accordance with part 4.3 and the Member's AB Pension Account Balance shall be paid in accordance with part 4.4.

Part 4.4 Account Based Pensions

4.4.1 Application of Part 4.4.

This part 4.4 applies if the Member or Eligible Person, as applicable, has elected under clause 4.3.2(b), and the Trustee has approved, that the whole or part of that Member's or Eligible Person's benefit will be paid as an Account Based Pension.

4.4.2 AB Pension Account.

- (a) **Establishment.** The Trustee must cause to be maintained in respect of each Account Based Pension an account to be called the AB Pension Account.
- (b) **Credits and debits.** Subject to clause 4.4.3, there shall be credited to the AB Pension Account:

- (1) any contributions to the Fund by or in respect of the Member under clause 4.4.3;
- (2) any amount transferred in respect of the Member from another division of the Fund or from the Member's Division 4 Account;
- (3) any amount transferred from an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to credit to the Pension Account;
- (4) any proceeds of insurance in respect of the Member;
- (5) investment earnings at the Declared Rate (if positive); and
- (6) any other amounts which this Deed may require to be credited to the AB Pension Account or which the Trustee may determine to credit to the AB Pension Account,

and there shall be debited to the AB Pension Account:

- (7) any amounts which the Trustee may determine to debit in respect of Tax and Fund Expenses;
- (8) any amount in respect of insurance premiums as determined by the Trustee;
- (9) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the AB Pension Account;
- (10) any amounts transferred in respect of the Member to another division of the Fund;
- (11) any benefit paid to or in respect of the Member from the AB Pension Account;
- (12) any benefit paid by way of commutation under clause 4.4.7;
- (13) investment earnings at the Declared Rate (if negative); and
- (14) any other amounts which this Deed may require to be debited to the AB Pension Account or which the Trustee may determine to debit to the AB Pension Account.

4.4.3 Contributions and other amounts.

Subject to clause 4.4.5, an Account Based Pensioner (or other person in respect of an Account Based Pensioner) may contribute to the Fund under the conditions and in the manner determined by the Trustee but, unless the Relevant Law permits otherwise, no further contributions or proceeds of insurance or any other amounts will be accepted under this part 4.4 once Account Based Pension payments have commenced.

4.4.4 Payment of an Account Based Pension.

- (a) Subject to clause 4.4.5, an Account Based Pension will be paid in accordance with this clause 4.4.4.
- (b) Subject to clause 4.4.4(c) and clause 4.4.4(d), notwithstanding that the size of Account Based Pension payments in each financial year is not fixed, payments from the Pension Account must be made at least once in each financial year until the earlier of the

Account Based Pensioner's death or the date that the whole of the Account Based Pensioner's Pension Account Balance is exhausted.

- (c) The frequency of Account Based Pension payments will be, at the election of the Account Based Pensioner, monthly, quarterly or annually (or such other frequency as determined by the Trustee) subject to the Relevant Law and any terms and conditions determined by the Trustee.
- (d) If the Account Based Pension commences on or after 1 June in a year, no Account Based Pension payments need be made in the initial year unless required by the Relevant Law.
- (e) Subject to clause 4.4.7, the amount of an Account Based Pension payment in any payment period may be altered by the Account Based Pensioner if advised to the Trustee (subject to any terms and conditions determined by the Trustee), so long as the payment as altered is not less than the minimum amount required under the Relevant Law. If the Account Based Pensioner does not specify the amount to be paid, the payment must be the minimum amount required under the Relevant Law.
- (f) On the death of the Account Based Pensioner:
 - (1) the Trustee must transfer the Account Based Pension to the Reversionary Beneficiary nominated in any Reversionary Pension Nomination made in accordance with clause 4.4.6; or
 - (2) if clause 4.4.4(f)(1) does not apply, subject to clause 1.20.8(a)(1), the Trustee in its discretion may either:
 - (A) transfer the Account Based Pension to a Reversionary Beneficiary; or
 - (B) pay the Pension Account Balance in accordance with clause 1.20.8(b).
- (g) On the death of a Reversionary Beneficiary, any remaining AB Pension Account Balance will be paid in accordance with clause 1.20.8.

4.4.5 Variations to enable compliance with Relevant Law.

The Relevant Law contains specific provisions governing the payment of Account Based Pensions. Accordingly, the Trustee may vary any of the provisions of this part 4.4 or impose additional conditions in order to ensure that the Fund does not breach, or fail to comply with, the Relevant Law.

4.4.6 Nomination of agreed Reversionary Beneficiary.

An Account Based Pensioner may, at any time allowed by the Trustee, nominate one or more Dependants to whom the Account Based Pension must be transferred after the Member's death, provided that the nomination occurs in accordance with:

- (a) any procedures or requirements determined by the Trustee; and
- (b) the Relevant Law.

4.4.7 Commutation.

- (a) In circumstances permitted under the Relevant Law and subject to any terms and conditions determined by the Trustee, an Account Based Pensioner or, after the Account Based Pensioner's death, a Reversionary Beneficiary may elect to commute a part or all

of the Account Based Pension that the Account Based Pensioner or Reversionary Beneficiary would otherwise be entitled to receive under clause 4.4.4 and to be paid the commuted amount as a lump sum. After commutation, the Account Based Pensioner's or Reversionary Beneficiary's future Account Based Pension payments will be re-calculated in accordance with the Relevant Law.

- (b) In circumstances required under the Relevant Law and subject to any terms and conditions determined by the Trustee, after the Account Based Pensioner's death, a Reversionary Beneficiary may be required to commute all of the Account Based Pension that the Reversionary Beneficiary would otherwise be entitled to receive under clause 4.4.4 and to be paid the commuted amount as a lump sum.

Part 4.5

Allocated Pensions and Term Allocated Pensions

4.5.1 Application of Part 4.5.

This part 4.5 applies if the Member or Eligible Person, as applicable, has elected under clause 4.3.2(b), and the Trustee has approved, that the whole or part of that Member's or Eligible Person's benefit will be paid as an Allocated Pension or Term Allocated Pension.

4.5.2 Pension Account.

- (a) **Establishment.** The Trustee must cause to be maintained in respect of each Allocated Pension and Term Allocated Pension, an account to be called the Pension Account.

- (b) **Credits and debits.** Subject to clause 4.5.3, there shall be credited to the Pension Account:

- (1) any contributions to the Fund by or in respect of the Member under clause 4.5.3;
- (2) any amount transferred in respect of the Member from another division of the Fund or from the Member's Division 4 Account;
- (3) any amount transferred from an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to credit to the Pension Account;
- (4) any proceeds of insurance in respect of the Member;
- (5) investment earnings at the Declared Rate (if positive); and
- (6) any other amounts which this Deed may require to be credited to the Pension Account or which the Trustee may determine to credit to the Pension Account,

and there shall be debited to the Pension Account:

- (7) any amounts which the Trustee may determine to debit in respect of Tax and Fund Expenses;
- (8) any amount in respect of insurance premiums as determined by the Trustee;
- (9) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the Pension Account;

- (10) any amounts transferred in respect of the Member to another division of the Fund;
- (11) any benefit paid to or in respect of the Member from the Pension Account;
- (12) any benefit paid by way of commutation under clause 4.5.9;
- (13) investment earnings at the Declared Rate (if negative); and
- (14) any other amounts which this Deed may require to be debited to the Pension Account or which the Trustee may determine to debit to the Pension Account.

4.5.3 Contributions and other amounts.

Subject to clause 4.5.6, an Allocated Pensioner or Term Allocated Pensioner (or other person in respect of an Allocated Pensioner or Term Allocated Pensioner) may contribute to the Fund under the conditions and in the manner determined by the Trustee but, unless the Relevant Law permits otherwise, no further contributions or proceeds of insurance to be credited or any other amounts to be transferred will be accepted under this part 4.5 once Allocated Pension or Term Allocated Pension payments have commenced.

4.5.4 Payment of an Allocated Pension.

- (a) Subject to clause 4.5.6, an Allocated Pension will be paid in accordance with this clause 4.5.4.
- (b) Subject to clause 4.5.4(c) and clause 4.5.4(d), notwithstanding that the size of Allocated Pension payments in each financial year is not fixed, payments from the Pension Account must be made at least once in each financial year until the earlier of the Allocated Pensioner's death or the date that the whole of the Allocated Pensioner's Pension Account Balance is exhausted.
- (c) The frequency of Allocated Pension payments will be, at the election of the Allocated Pensioner, monthly, quarterly or annually (or such other frequency as determined by the Trustee) subject to the Relevant Law and any terms and conditions determined by the Trustee.
- (d) If the Allocated Pension commences on or after 1 June in a year, no Allocated Pension payments need be made in the initial year unless required by the Relevant Law
- (e) Subject to clause 4.5.9, the amount of an Allocated Pension payment in any payment period may be altered by the Allocated Pensioner if advised to the Trustee (subject to any terms and conditions determined by the Trustee), so long as the payment as altered is not less than the minimum amount nor greater than the maximum amount required under the Relevant Law. If the Allocated Pensioner does not specify the amount to be paid, the payment must be the minimum amount required under the Relevant Law.
- (f) On the death of the Allocated Pensioner:
 - (1) the Trustee must transfer the Allocated Pension to the Reversionary Beneficiary nominated in any Reversionary Pension Nomination given to the Trustee in accordance with clause 4.5.7; or
 - (2) if clause 4.5.4(f)(1) does not apply, subject to clause 1.20.8(a)(1), the Trustee in its discretion may either:
 - (A) transfer the Allocated Pension to a Reversionary Beneficiary; or

(B) pay the Pension Account Balance in accordance with clause 1.20.8(b).

(g) On the death of a Reversionary Beneficiary, any remaining Pension Account Balance will be paid in accordance with clause 1.20.8.

4.5.5 Payment of Term Allocated Pension.

(a) Subject to clause 4.5.6, a Term Allocated Pension will be paid in accordance with this clause 4.5.5.

(b) Subject to clause 4.5.5(c) and clause 4.5.5(d), payments from the Pension Account must be made at least once in each financial year until the earlier of the expiration of the life expectancy period nominated by the Member in accordance with the Relevant Law or the date that the whole of the Pension Account Balance is exhausted.

(c) The frequency of Term Allocated Pension payments will be, at the election of the Term Allocated Pensioner, monthly, quarterly or annually (or such other frequency as determined by the Trustee) subject to the Relevant Law and any terms and conditions determined by the Trustee.

(d) If the Term Allocated Pension commences on or after 1 June in a year, no Term Allocated Pension payments need be made in the initial year unless required by the Relevant Law.

(e) On the death of the Term Allocated Pensioner:

(1) the Trustee must transfer the Term Allocated Pension to the Reversionary Beneficiary nominated in any Reversionary Pension Nomination given to the Trustee in accordance with clause 4.5.7; or

(2) if clause 4.5.5(e)(1) does not apply, subject to clause 1.20.8(a)(1), the Trustee in its discretion may either:

(A) transfer the Term Allocated Pension to a Reversionary Beneficiary; or

(B) pay the Pension Account Balance in accordance with clause 1.20.8(b).

(f) On the death of a Reversionary Beneficiary, any remaining Pension Account Balance will be paid in accordance with clause 1.20.8.

4.5.6 Variations to enable compliance with Relevant Law.

The Relevant Law contains specific provisions governing the payment of Allocated Pensions and Term Allocated Pensions. Accordingly, the Trustee may vary any of the provisions of this part 4.5 or impose additional conditions in order to ensure that the Fund does not breach, or fail to comply with, the Relevant Law.

4.5.7 Nomination of agreed Reversionary Beneficiary.

An Allocated Pensioner or Term Allocated Pensioner may, at any time allowed by the Trustee, nominate one or more Dependants to whom the Allocated Pension or Term Allocated Pension must be transferred after the Member's death, provided that the nomination occurs in accordance with:

(a) any procedures or requirements determined by the Trustee; and

(b) the Relevant Law.

4.5.8 Commutation.

- (a) In circumstances permitted under the Relevant Law and subject to any terms and conditions determined by the Trustee, an Allocated Pensioner or Term Allocated Pensioner or, after the Allocated Pensioner's or Term Allocated Pensioner's death, a Reversionary Beneficiary may elect to commute a part or all of the Allocated Pension or Term Allocated Pension that the Allocated Pensioner, Term Allocated Pensioner or Reversionary Beneficiary would otherwise be entitled to receive under clause 4.5.4 or 4.5.5 and to be paid the commuted amount as a lump sum. After commutation, the Allocated Pensioner's, Term Allocated Pensioner's or Reversionary Beneficiary's future Allocated Pension or Term Allocated Pension payments will be re-calculated in accordance with the Relevant Law.
- (b) In circumstances required under the Relevant Law and subject to any terms and conditions determined by the Trustee, after the Pensioner's death, a Reversionary Beneficiary may be required to commute all of the Allocated Pension or Term Allocated Pension that the Reversionary Beneficiary would otherwise be entitled to receive under clause 4.5.4 or 4.5.5 and to be paid the commuted amount as a lump sum.

Part 4.6 Complying Pensions

4.6.1 Application of Part 4.6.

This part 4.6 applies:

- (a) if the Member elects under clause 4.3.2(b), and the Trustee approves, that the whole or part of a Member's Division 4 Account Balance or any other amount the Trustee determines is being used to establish a Complying Pension (which may include amounts transferred or allocated from any division of the Fund or an Approved Benefit Arrangement) will be paid as a Complying Pension; and
- (b) to a benefit the Trustee determines will be paid or is being paid as a Complying Pension.

4.6.2 Complying Pensions.

If the Trustee decides to issue a Complying Pension from the Fund:

- (a) the Trustee may determine (and may amend at any time) rules applicable to the Complying Pension (**Complying Pension Rules**);
- (b) any condition or standard of the Supervision Act or Supervision Regulations that is required to be satisfied in order for the Complying Pension to qualify as a pension for the purposes of the Supervision Act is deemed to be included in this Part 4.6, and will apply to the Complying Pension, unless and until the Trustee determines otherwise;
- (c) without limiting the generality of clauses 4.6.2(a) and 4.6.2(b), the Trustee may determine that the Complying Pension will be issued subject to the rules in the Supervision Regulations applying to a pension that is an innovative superannuation income stream which satisfies the requirements of regulation 1.06A of the Supervision Regulations and, in that case, the rules applying to the Complying Pension will not meet the standards in subparagraph 1.06(9A)(b)(i) or (ii) (as applicable) of the Supervision Regulations; and
- (d) if any provision of the Complying Pension Rules conflicts with or is inconsistent with a condition or standard of the Supervision Act or Supervision Regulations required for the

Complying Pension to qualify as a pension for the purposes of the Supervision Act, the condition or standard prevails to the extent of the conflict or inconsistency.

DIVISION 5
FORMER TSS NO. 1 PLAN
Part 5.1
Application and Interpretation

5.1.1 Application of division 5.

- (a) This division 5 is always subject to division 1 of this Deed, and (subject to clause 5.1.1(c)) division 1 prevails over this division 5 to the extent of any conflict.
- (b) This division 5 only applies to and in respect of a member of the Fund who is for the time being categorised as a Member of this division 5.
- (c) Notwithstanding anything expressed or implied to the contrary in clause 1.14.4, once a member of the Fund has been categorised as a Member of this division 5, the Member may only be re-categorised out of division 5 and into another division of the Fund with the Member's consent.

5.1.2 Definitions.

In this division 5, unless the contrary intention appears or the context requires otherwise:

"Accumulation Contributions" means the contributions the Member or the Member's spouse has selected or is deemed to have selected for the time being in accordance with clause 5.4.1(b), clause 5.4.2(b) or clause 5.4.2(c).

"Aggregate Contribution Percentage" in relation to a Contributory Member means the sum of the percentages arrived at by multiplying each Member Defined Benefit Contribution Rate that has applied to the Member by the number of years and parts of a year of Contributory Membership (where each completed month counts as one-twelfth of a year) during which that rate applied to the Member.

"Average Contribution Percentage" means the amount determined by dividing the Member's Aggregate Contribution Percentage by the period of the Member's Contributory Membership provided that for the purposes of calculation of benefits under this division 5 the Average Contribution Percentage of a Member shall not exceed 5%.

"Contributory Member" means a Member who has at any time been admitted to Contributory Membership of division 5.

"Contributory Membership" means the period of Superannuation Membership before the Member's Normal Retirement Date during which a Member made Defined Benefit Contributions to the Fund, or contributed to the Telstra Superannuation Scheme No. 1, measured in years and parts of a year (where each completed month counts as one-twelfth of a year).

"Date of Disablement" means in relation to a Member who is or was Totally Disabled or Totally and Permanently Disabled -

- (a) if the Member ceased to be an Employee because of Total Disability or Total and Permanent Disablement - the date determined by the Trustee to be the date on which the Member last ceased to be an Employee; or
- (b) such other date as determined by the Trustee.

"Deferral Date" means in relation to a Member a date as at which all or part of a benefit may be paid from the Fund without causing the Fund to fail to comply with or satisfy any applicable requirement of a Relevant Law.

“Defined Benefit Contribution” means in relation to a Member a contribution made pursuant to clause 5.4.2(a).

“Defined Benefit Member Account” means in relation to a Member the account of that name maintained in respect of the Member in accordance with part 5.2.

“Defined Benefit Member Account Balance” means in relation to a Member as at any particular date the credit balance (if any) in the Member’s Defined Benefit Member Account, after all the relevant credits and debits have been made to that account.

“Final Average Salary” means in relation to a Member the average of the Salaries paid to a Member on the date the Member ceased to be an Employee and on the two dates preceding that date by 12 and 24 months, respectively, but, subject to part 1.2 and clause 1.16.5, Final Average Salary shall be any other amount or determined in any other manner specified by the Principal Employer and approved by the Trustee and the Member from time to time for the purposes of the whole or any particular provision of the Deed.

“Interim Scheme Benefit” means in relation to a Member the product of 13% and the Member’s Interim Scheme Membership and the Member’s Final Average Salary.

“Interim Scheme Membership” means in relation to a Member the period from the later of -

(a) 1 July 1990; or

(b) the date the Member first became an Employee of the Employer,

until the earlier of -

(c) 30 August 1991; or

(d) the date the Member first became a member of the Telstra Superannuation Scheme No. 1, measured in years and parts of a year (where each completed month counts as one-twelfth of a year).

“Member” means an Employee who is categorised by the Principal Employer as a Member of this division 5.

“Member Defined Benefit Contribution Rate” means a percentage which shall not be less than 1% and shall be in multiples of 1% up to a maximum of 10% of Salary (or any other percentage of Salary agreed between the Trustee and the Principal Employer from time to time either generally or in any particular case) and, when used in relation to a Contributory Member, means whichever of the permitted percentages the Member has selected or is deemed to have selected for the time being.

“Non-Contributory Member” means an Eligible Employee who is not a Contributory Member and who has been admitted to Non-Contributory Membership of division 5.

“Normal Retirement Date” means in relation to a Member the Member’s 65th birthday or such other date as may be agreed between the Trustee, the Principal Employer and the Member.

“Previous Fund” means the Commonwealth Superannuation Scheme.

“Previous Fund Benefit Factor” means in respect of a Previous Fund Member the product of 20% and the Member’s Previous Fund Membership up to and including 30 June 1990.

“Previous Fund Member” means a Member who was classified as a “Previous Fund Member” under the Telstra Superannuation Scheme No. 1 immediately prior to 1 July 1997.

“Previous Fund Membership” means the period recognised as “Previous Fund Membership” under the Telstra Superannuation Scheme No. 1 immediately prior to 1 July 1997.

“Productivity Accumulation Account” means in relation to a Member the account of that name maintained in respect of the Member in accordance with part 5.2.

“Productivity Accumulation Account Balance” means in relation to a Member as at any particular date the credit balance (if any) in the Member’s Productivity Accumulation Account, after all relevant credits and debits have been made to that account.

“Salary” means in relation to a Member at any particular date the Member’s annual rate of ordinary remuneration notified to the Trustee by the Employer as at that date including any allowance which is included as salary for the purposes of the *Superannuation Act 1976* but in any particular case, and subject to part 1.2 –

- (a) Salary shall be any other amount or determined in any manner specified by the Principal Employer and approved by the Trustee and the Member for the purposes of the whole or any particular provision of the Deed; and
- (b) a Member’s Salary at any particular date during Division 5 Membership will not be less than the Member’s Salary on any previous date of Division 5 Membership; and
- (c) a Member’s Salary during a period of Division 5 Membership when the Member is absent from active employment with the Employer without pay is the Salary which applied in respect of the Member on the last day of the Member’s active employment with the Employer immediately before the commencement of that period of absence.

“Special Accumulation Account” means in relation to a Member the account maintained in respect of the Member in accordance with part 5.2.

“Special Accumulation Account Balance” means in relation to a Member as at any particular date the credit balance (if any) in the Member’s Special Accumulation Account, after all relevant credits and debits have been made to that account.

“Supplementary Benefit” means in respect of a Contributory Member an amount determined by the following formula:

$$A \times (1-R)$$

where “A” and “R” have the same meaning as in clause 5.6.9(a).

“Total and Permanent Disablement” in relation to a Member:

- (a) has the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) in any policy of insurance effected by the Trustee; or
- (b) if no policy of insurance is in force in relation to the Member, means permanent incapacity as defined in the Supervision Act, and a Member shall be deemed to be Totally and Permanently Disabled if the Member has suffered the loss of two limbs, or the sight of both eyes, or the loss one limb and the sight of one eye, where ‘limb’ means the whole hand or the whole foot,

and **“Totally and Permanently Disabled”** shall have a corresponding meaning.

“**Total Disability**” in relation to a Member has the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) in any policy of insurance effected by the Trustee and “**Totally Disabled**” shall have a corresponding meaning.

“**Voluntary Account**” means in relation to a Member the account of that name maintained in respect of the Member in accordance with part 5.2.

“**Voluntary Account Balance**” means in relation to a Member as at any particular date the credit balance (if any) in the Member’s Voluntary Account, after all relevant credits and debits have been made to that account.

5.1.3 Membership.

In the case of a Member who at any time since last becoming a member of the Fund was categorised as a member of another division, the period when that Member was categorised as a member of another division, and any benefits accumulated or accrued under that other division, shall not be taken into account under this division 5.

Part 5.2 Member’s Accounts

5.2.1 Defined Benefit Member Account.

The Trustee must establish in respect of each Contributory Member a Defined Benefit Member Account to be maintained in accordance with clause 5.2.5(a).

5.2.2 Productivity Accumulation Account.

The Trustee must establish in respect of each Member a Productivity Accumulation Account to be maintained in accordance with clause 5.2.5(b).

5.2.3 Special Accumulation Account.

The Trustee must establish in respect of each Contributory Member who was a Previous Fund Member a Special Accumulation Account to be maintained in accordance with clause 5.2.5(c).

5.2.4 Voluntary Account.

The Trustee must establish in respect of each Member a Voluntary Account to be maintained in accordance with clause 5.2.5(d).

5.2.5 Credits and debits.

(a) There shall be credited to a Member’s Defined Benefit Member Account:

- (1) contributions made by or in respect of the Member under clause 5.4.2(a);
- (2) investment earnings at the Declared Rate (if positive); and
- (3) any other amounts which this Deed may require to be credited to the Defined Benefit Member Account or which the Trustee may determine to credit to the Account,

and there shall be debited to the Member’s Defined Benefit Member Account:

- (4) any amounts which the Trustee may determine to debit in respect of Tax and Fund Expenses;

- (5) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the Account;
 - (6) any amounts transferred to another division of the Fund;
 - (7) any benefit attributable to the Account;
 - (8) investment earnings at the Declared Rate (if negative); and
 - (9) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.
- (b) There shall be credited to a Member's Productivity Accumulation Account:
- (1) contributions nominated by the Principal Employer;
 - (2) if a Member continues to be an Employee after the Normal Retirement Date, the amount contributed by the Employer under clause 5.3(a);
 - (3) investment earnings at the Declared Rate (if positive); and
 - (4) any other amounts which this Deed may require to be credited to the Productivity Accumulation Account or which the Trustee may determine to credit to the Account,
- and there shall be debited to the Member's Productivity Accumulation Account:
- (5) any amounts which the Trustee may determine to debit in respect of Tax and Fund Expenses;
 - (6) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the Account;
 - (7) any amounts transferred to another division of the Fund;
 - (8) any benefit attributable to the Account;
 - (9) investment earnings at the Declared Rate (if negative); and
 - (10) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.
- (c) There shall be credited to a Member's Special Accumulation Account:
- (1) the Member's "Accumulated Supplementary Contributions" made by the Member to the Previous Fund as at 30 June 1990;
 - (2) investment earnings at the Declared Rate (if positive); and
 - (3) any other amounts which this Deed may require to be credited to the Special Accumulation Account or which the Trustee may determine to credit to the Account,

and there shall be debited to the Member's Special Accumulation Account:

- (4) any amounts which the Trustee may determine to debit in respect of Tax and Fund Expenses;
 - (5) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the Account;
 - (6) any amounts transferred to another division of the Fund;
 - (7) any benefit attributable to the Account;
 - (8) investment earnings at the Declared Rate (if negative); and
 - (9) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.
- (d) There shall be credited to a Member's Voluntary Account:
- (1) the Accumulation Contributions made by or in respect of the Member under clause 5.4.1(b), clause 5.4.2(b) or clause 5.4.2(c);
 - (2) any amount transferred from an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to credit to the Account;
 - (3) any amount that the Member elects to transfer to the Member's Voluntary Account that is a "transitional termination payment" (within the meaning of the Tax Act) payable in respect of the Member from an employer;
 - (4) investment earnings at the Declared Rate (if positive);
 - (5) any contributions made in respect of the Member as an Eligible Spouse;
 - (6) any Insurance Benefit; and
 - (7) any other amounts which this Deed may require to be credited to the Voluntary Account or which the Trustee may determine to credit to the Account,

and there shall be debited to the Member's Voluntary Account:

- (8) any amounts which the Trustee may determine to debit in respect of Tax, Fund Expenses and Group Life Insurance;
- (9) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the Account;
- (10) any amounts transferred to another division of the Fund;
- (11) any benefit attributable to the Account;
- (12) investment earnings at the Declared Rate (if negative); and
- (13) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.

Part 5.3
Employer Contributions

- (a) With respect to any period during which a Member continues to be an Employee after the Normal Retirement Date, the Employer must contribute to the Member's Productivity Accumulation Account the amount or amounts required having regard to the Employer's obligations under the SG Act.
- (b) The Employer may, and must as agreed with the Member, contribute to the Fund any additional amount which the Employer determines either generally or in respect of any particular Member.

Part 5.4
Member Contributions

5.4.1 Non-Contributory Members.

- (a) A Non-Contributory Member is not required to contribute to the Fund, and is a Member who has never made Defined Benefit Contributions to the Fund.
- (b) A Non-Contributory Member and the Non-Contributory Member's Spouse may make voluntary Accumulation Contributions to the Fund as the Trustee approves from time to time.

5.4.2 Contributory Members.

Subject to clauses 5.4.3 and 5.4.4 -

- (a) subject to clause 5.4.2(c), a Contributory Member must elect a Member Defined Benefit Contribution Rate upon commencement of Contributory Membership, by notifying the Trustee in a form acceptable to the Trustee; and
- (b) in addition to any contributions which a Contributory Member makes under clause 5.4.2(a), a Member and the Member's Spouse may make voluntary Accumulation Contributions to the Fund as the Trustee approves from time to time; and
- (c) if a Contributory Member continues to be an Employee on and after the Member's Normal Retirement Date, the Member:
 - (1) must cease making Defined Benefit Contributions under clause 5.4.2(a) with effect from the Member's Normal Retirement Date; and
 - (2) may make additional voluntary Accumulation Contributions.

5.4.3 Variation of Member Defined Benefit Contribution Rate.

Subject to clause 5.4.5, a Contributory Member may vary the Member's Member Defined Benefit Contribution Rate by selecting another Member Defined Benefit Contribution Rate which the Member wishes to apply with effect from the first day of the pay period which commences on or next follows the date the Employer receives the Member's selection form.

5.4.4 Cessation of Member contributions.

Subject to clause 5.4.5, a Contributory Member may cease Defined Benefit Contributions by giving the Trustee notice in the manner and at times determined by the Trustee and that Member will nonetheless remain a Contributory Member but the Member's period of

Contributory Membership shall cease from the date specified in the notice of cessation to the Trustee, and the Trustee shall adjust the benefits payable pursuant to part 5.6 accordingly.

5.4.5 Permitted selection method.

A Member’s selection of the applicable Member Defined Benefit Contribution Rate is effective only if made by the Member in writing in a form agreed between the Trustee and the Employer and received by the Employer.

A selection which does not satisfy these conditions is void.

**Part 5.5
Non-Contributory Member Benefits**

5.5.1 Withdrawal benefit.

Upon a Non-Contributory Member ceasing to be an Employee for any reason other than upon the Non-Contributory Member’s death, Total and Permanent Disablement in the circumstances provided for under clause 5.5.2 or the Non-Contributory Member suffering a terminal medical condition within the meaning of the Supervision Regulations, there shall be payable to the Member a lump sum benefit of an amount equal to the sum of:

- (a) the Member’s Productivity Accumulation Account Balance; and
- (b) the Member’s Special Accumulation Account Balance (if any); and
- (c) if the Member was a Previous Fund Member, the product of the Member’s Previous Fund Benefit Factor and Final Average Salary; and
- (d) the Member’s Interim Scheme Benefit (if any); and
- (e) the Member’s Voluntary Account Balance (if any).

5.5.2 Death and Disablement benefits.

Upon the death or Total and Permanent Disablement of a Non-Contributory Member during a period of Division 5 Membership prior to the Normal Retirement Date, subject to clause 1.9.2, a lump sum benefit will be payable to or in respect of the Member equal to:

- (a) the sum of the amounts set out in paragraphs (a) – (e) of clause 5.5.1; and
- (b) the amount shown in the following table in accordance with the age and the Salary of the Non-Contributory Member at the date of the Non-Contributory Member’s death or Total and Permanent Disablement, interpolating between the amount shown for whole years of age for additional complete months of age:

Age of Member at date of death or Total and Permanent Disablement	Multiple of Salary at date of death or Total and Permanent Disablement
55 or less	2
56	1.8
57	1.6

Age of Member at date of death or Total and Permanent Disablement	Multiple of Salary at date of death or Total and Permanent Disablement
58	1.4
59	1.2
60	1.0
61	0.8
62	0.6
63	0.4
64	0.2
65	Nil

5.5.3 Terminal Illness Benefit.

- (a) If a Non-Contributory Member suffers a terminal medical condition within the meaning of the Supervision Regulations there is payable to the Member from the Fund a lump sum benefit of an amount equal to the benefit which would have been payable under clause 5.5.2 if the Member had died on the date the benefit payable under this clause 5.5.3 is paid.
- (b) Following the payment of a benefit under this clause 5.5.3:
- (i) clause 1.20.11(b)(2) applies; and
 - (ii) the Member's right or claim to any further benefit under division 5 is extinguished.

Part 5.6 Contributory Member Benefits

5.6.1 Benefit on retirement at Normal Retirement Date.

If a Contributory Member ceases to be an Employee on the Normal Retirement Date, there is payable to the Member from the Fund a lump sum benefit of an amount equal to the sum of:

- (a) 8% of the Member's Final Average Salary multiplied by the Member's Contributory Membership; and
- (b) the product of twice the Member's Average Contribution Percentage, Contributory Membership and Final Average Salary; and
- (c) where the Member was a Previous Fund Member, the product of the Member's Previous Fund Benefit Factor and Final Average Salary; and
- (d) the Member's Productivity Accumulation Account Balance; and

- (e) the Member's Special Accumulation Account Balance (if any); and
- (f) the Member's Interim Scheme Benefit (if any); and
- (g) the Member's Supplementary Benefit (if any); and
- (h) the Member's Voluntary Account Balance (if any).

5.6.2 Benefit on retirement prior to Normal Retirement Date.

If a Contributory Member ceases to be an Employee within 10 years prior to the Normal Retirement Date there is payable to the Member from the Fund a lump sum benefit or an amount equal to the benefit payable in accordance with clause 5.6.1 based on the Member's Contributory Membership as at the date of the Member's early retirement.

5.6.3 Benefit on late retirement.

If a Contributory Member ceases to be an Employee after the Normal Retirement Date, there is payable to the Member from the Fund a lump sum benefit of an amount equal to:

- (a) the benefit the Member would have received in accordance with clauses 5.6.1(a), (b) and (c) had the Member retired on the Normal Retirement Date, credited with investment earnings at the Declared Rate until the date of the Member's late retirement; and
- (b) the Member's Productivity Accumulation Account Balance (but not including any amount already accounted for in clause 5.6.3(a)); and
- (c) the Member's Special Accumulation Account Balance if any; and
- (d) the Member's Interim Scheme Benefit (if any); and
- (e) the Member's Supplementary Benefit (if any); and
- (f) the Member's Voluntary Account Balance (if any) (but not including any amount already accounted for in clause 5.6.3(a)).

5.6.4 Benefit payable upon death prior to Normal Retirement Date.

If a Contributory Member dies prior to the Normal Retirement Date:

- (A) while an Employee during a period of Division 5 Membership; or
- (B) within 30 days of ceasing to be an Employee, subject to any conditions determined by the Trustee from time to time either generally or in any particular case,

subject to clause 1.9.2, there is payable in respect of the Member from the Fund in accordance with division 1 a lump sum benefit of an amount equal to the sum of:

- (a) an amount equal to the greater of:
 - (1) the benefit which would have been payable to the Member pursuant to clauses 5.6.1(a), (b) and (c) had:
 - (A) the Member survived to and retired upon the Normal Retirement Date; and
 - (B) the Salary of the Member at the date of death remained unchanged; and

(C) the Member's Member Defined Benefit Contribution Rate been 5% from the date of the Member's death to the Normal Retirement Date,

or

(2) the amount shown in the following table in accordance with the age and Salary of the Contributory Member at the date of the Member's death, interpolating between the amounts shown for whole years of age for additional complete months of age:

Age of Member at date of death or Total and Permanent Disablement	Multiple of Salary at date of death or Total and Permanent Disablement
55 or less	3
56	2.7
57	2.4
58	2.1
59	1.8
60	1.5
61	1.2
62	0.9
63	0.6
64	0.3
65	Nil

and

- (b) the Member's Productivity Accumulation Account Balance; and
- (c) the Member's Special Accumulation Account Balance, if any; and
- (d) the Member's Interim Scheme Benefit (if any); and
- (e) the Member's Supplementary Benefit (if any); and
- (f) the Member's Voluntary Account Balance (if any).

5.6.5 Benefit payable upon death on or after Normal Retirement Date.

If a Contributory Member dies on or after the Normal Retirement Date:

- (a) while still an Employee during a period of Division 5 Membership; or

- (b) within 30 days of ceasing to be an Employee, subject to any conditions determined by the Trustee from time to time either generally or in any particular case,

there is payable from the Fund in respect of the Member in accordance with division 1, a lump sum benefit equal to the amount which would have been payable under clause 5.6.3 if that Member had retired on the date of the Member's death.

5.6.6 Benefit payable upon Total and Permanent Disablement.

If, prior to the Normal Retirement Date, a Contributory Member:

- (a) becomes Totally and Permanently Disabled while still an Employee; or
- (b) within 30 days of ceasing to be an Employee, becomes disabled to the extent that the Member would have been entitled to a Total and Permanent Disablement benefit if the Member had remained an Employed Member, subject to any conditions determined by the Trustee from time to time either generally or in any particular case,

the amount of the benefit payable to the Member from the Fund is equal to the amount which would have been payable had the Member died on the day on which the Member became Totally and Permanently Disabled, provided that, in the case of Total and Permanent Disablement, if the Member has not retired from all Gainful Employment because of permanent incapacity or permanent invalidity in terms of any applicable requirement of a Relevant Law regarding preservation of benefits, then that part of the benefit which must be preserved in order to comply with the Relevant Law must be transferred to an Approved Benefit Arrangement or to division 4.

5.6.7 Benefit payable upon Total Disability.

- (a) **Entitlement to income benefit.** If a Contributory Member becomes Totally Disabled before the Normal Retirement Date while an Employee and while contributing to the Fund pursuant to clause 5.4.2 an income benefit is payable to the Member in accordance with and subject to the terms of the relevant policy of insurance.
- (b) **Arrangements after cessation of income benefit.**
 - (1) If the Member continues to be, or again becomes, an Employee when the income benefit ceases, the Member shall continue as a Member of division 5 and the Deed shall continue to apply to and in respect of the Member.
 - (2) If the Member does not continue to be, or again become, an Employee when the income benefit ceases there shall be payable to or in respect of the Member from the Fund a benefit determined in accordance with the relevant provisions of division 5 on the date as at which the income benefit ceased to be payable.
- (c) **Interpretational provisions.** For the purposes of the whole or any particular provision of the Deed, in the case of a Member who is entitled to receive an income benefit under this clause 5.6.7 -
 - (1) the Member is deemed to have remained an Employee during the whole of the period for which the income benefit is payable and any deferment or waiting period for that benefit (the aggregate of such periods being hereinafter referred to as "the Disability Period"); and
 - (2) during the Disability Period the Member's Salary shall be deemed to be equal to the Member's Salary immediately before the Date of Disablement or, subject to part 1.2, any greater amount as may be determined by the Principal Employer.

- (d) **Lump sum payments: special circumstances.** If during payment of the income benefit to a Member the Trustee determines that a payment under this clause 5.6.7(d) is appropriate and that to make such a payment would not, in the opinion of the Trustee, cause the Fund to be in breach of or to fail to comply with any applicable requirement of the Relevant Law, the Trustee and the Principal Employer may agree to pay or apply from the Fund for or in respect of the Member an amount or amounts not exceeding, in the aggregate, the minimum lump sum benefit (if any) which would have been payable from the Fund if the Member had voluntarily ceased to be an Employee in good health and without the consent or approval of the Employer on the date of that payment from the Fund provided that, unless otherwise agreed between the Trustee and the Principal Employer, any benefit which later becomes payable from the Fund in respect of the Member (other than the income benefit) must be adjusted in the manner and to the extent the Trustee considers appropriate and equitable to take account of any payments made pursuant to this clause 5.6.7.

5.6.8 Retrenchment benefit.

If a Contributory Member ceases to be an Employee in circumstances which the Principal Employer notifies the Trustee constitute retrenchment there is payable to the Member from the Fund a lump sum benefit of an amount equal to the sum of -

- (a) an amount calculated in accordance with clauses 5.6.1(a), (b) and (c) based on the Member's Contributory Membership up to the date of retrenchment; and
- (b) the Member's Productivity Accumulation Account Balance; and
- (c) the Member's Special Accumulation Account Balance if any; and
- (d) the Member's Interim Scheme Benefit (if any); and
- (e) the Member's Supplementary Benefit (if any); and
- (f) the Member's Voluntary Account Balance (if any).

5.6.9 Benefit on termination of employment.

Subject to division 1, if a Contributory Member ceases to be an Employee in circumstances where no other benefit is payable under part 5.6, there is payable to the Member from the Fund a lump sum benefit equal to the sum of -

- (a) an amount determined in accordance with the following formula:

$$(A \times R) + (V \times [B - (A \times R)]) + C$$

where

- "A" is the Member's Defined Benefit Member Account Balance;
- "B" is the benefit payable in accordance with clauses 5.6.1(a) and (b) based on the Member's Contributory Membership until the date of ceasing to be an Employee;
- "C" is the product of the Member's Previous Fund Benefit Factor and Final Average Salary;
- "R" is 5% times the Member's Period of Contributory Membership divided by the Member's Aggregate Contribution Percentage provided that "R" shall not be greater than 1;

“V” is the period of Contributory Membership and Previous Fund Membership in years and complete months divided by 4, provided that “V” shall not be greater than 1; and

- (b) the Member’s Productivity Accumulation Account Balance; and
- (c) the Member’s Special Accumulation Account Balance (if any); and
- (d) the Member’s Interim Scheme Benefit (if any); and
- (e) the Member’s Supplementary Benefit (if any); and
- (f) the Member’s Voluntary Account Balance (if any).

5.6.10 Terminal Illness Benefit.

- (a) If a Contributory Member suffers a terminal medical condition within the meaning of the Supervision Regulations there is payable to the Member from the Fund a lump sum benefit of an amount equal to the benefit which would have been payable under clause 5.6.4 or 5.6.5 (as applicable) if the Member had died on the date the benefit payable under this clause 5.6.10 is paid.
- (b) Following the payment of a benefit under this clause 5.6.10:
 - (i) clause 1.20.11(b)(2) applies; and
 - (ii) the Member’s right or claim to any further benefit under division 5 is extinguished.

**DIVISION 6
ACCUMULATION PLAN**

**Part 6.1
Application and Interpretation**

6.1.1 Application of division 6.

- (a) This division 6 is always subject to division 1 of this Deed, and division 1 prevails over this division 6 to the extent of any conflict.
- (b) This division 6 only applies to and in respect of a member of the Fund who is for the time being categorised as a Member of this division 6.

6.1.2 Definitions.

In this division 6, unless the contrary intention appears or the context requires otherwise:

"Base Salary" means, subject to part 1.2:

- (a) in relation to a Member (other than a Former Division 8 Member or a Sensis Member), the base salary of the Member as at the date the Member became a Member of this division 6 and each subsequent Review Date as determined by the relevant Employer either generally or in any particular case and as then notified to the Trustee; or
- (b) in relation to a Former Division 8 Member or a Sensis Member, the Member's Salary.

"Date of Disablement" means in relation to a Member who is or was Totally Disabled the date determined by the Trustee to be the date on which the illness or injury which (in the opinion of the Trustee after considering evidence satisfactory to the Trustee) was the primary cause of that disablement commenced or occurred, or, in any case, any other date the Trustee may declare to be the Member's Date of Disablement for the purposes of the whole or any particular provision of this division 6.

"Division 6 MySuper Member" means a Member of this division 6 who is a MySuper Member.

"Former Division 3 Member" means a Member who immediately prior to the MySuper Commencement Date, was an Employee who was categorised as a Fund member under what was then division 3 of the Fund's Deed and who was recategorised with effect on the MySuper Commencement Date under clause 1.14.4 to become a Member of this division 6.

"Former Division 8 Accumulation Member" means a Member who:

- (a) immediately prior to the MySuper Commencement Date, was an Employee who was categorised as an "Accumulation Member" under division 8 of the Fund's Deed and who was recategorised with effect on the MySuper Commencement Date under clause 1.14.4 to become a Member of this division 6; or
- (b) on or after the MySuper Commencement Date made an election under either clause 8.6.2A(a)(1) or clause 8.6.2A(b) of the Fund's Deed in effect at the time of the election, or made an election referred to in clause 8.6.2A(e)(A) of the Fund's Deed in effect at the time of the election, and became a Member of this division 6.

"Former Division 8 CACCUM Member" means a Member who, immediately prior to the MySuper Commencement Date, was an Employee who was categorised as a "Former Category CACCUM Member" under division 8 of the Fund's Deed and who was recategorised

with effect on the MySuper Commencement Date under clause 1.14.4 to become a Member of this division 6.

"Former Division 8 Member" means a Former Division 8 Accumulation Member, a Former Division 8 CACCUM Member or a Former Division 8 Telstra Accumulation Member.

"Former Division 8 Telstra Accumulation Member" means a Member who:

- (a) immediately prior to the MySuper Commencement Date, was an Employee who was categorised as a "Former Telstra Accumulation Member" under division 8 of the Fund's Deed and who was recategorised with effect on the MySuper Commencement Date under clause 1.14.4 to become a Member of this division 6; or
- (b) on or after the MySuper Commencement Date made an election under clause 8.6.2A(a)(2) of the Fund's Deed in effect at the time of the election, or made an election referred to in clause 8.6.2A(e)(B) of the Fund's Deed in effect at the time of the election, and became a Member of this division 6.

"Former Fund" means the Pacific Access Superannuation Fund established on 21 December 1990.

"Former Fund Member" means a Former Division 8 Member who immediately prior to the Transfer Date was a member of the Former Fund and who transferred to division 8 of the Fund on the Transfer Date.

"Member" means an Employee who is categorised by the Principal Employer as a Member of this division 6.

"Member's Account" means in relation to a Member the account of that name maintained in respect of the Member in accordance with part 6.2.

"Member's Account Balance" means in relation to a Member as at any particular date the credit balance (if any) in the Member's Account, after all relevant credits and debits have been made to the account.

"Other Division Benefit" means in relation to an Other Division Member in any particular circumstances and in relation to any other division ("Relevant Other Division") -

- (a) the benefit determined at the date the Other Division Member ceases to be an Employee as if that Member had ceased to be an Employee under the Relevant Other Division in the same (or what the Trustee determines to be the closest equivalent) circumstances but ignoring -
 - (1) any period when that Member was classified as a member of any division other than the Relevant Other Division; and
 - (2) any benefits accrued or accumulated under any division other than the Relevant Other Division; or
- (b) any other benefit determined, as agreed between the Trustee and the Principal Employer from time to time upon the advice of the Actuary, either generally or in any particular case.

"Other Division Member" means a Member who at any time during Superannuation Membership has also been classified as a member of any division other than this division 6.

“Review Date” means the date that the Principal Employer and Trustee determine to review the Salary or Base Salary of a Member either generally or in a particular case.

“Salary” means in relation to a Member (other than a Former Division 8 Member or a Sensis Member) at any particular date the Member’s annual rate of salary or wage payable to the Member by the Employer, and advised to the Trustee, including the following allowances:

- (a) an allowance which makes up salary or wages when a person’s salary or wage is reduced;
- (b) an allowance payable in recognition of a particular qualification or standard of proficiency in any skill;
- (c) an allowance payable in recognition of length of service and standard of efficiency attained;
- (d) an allowance payable to a person under the age of 21 years by reason of being married or performing duties normally performed by someone who has attained that age;
- (e) a shift allowance;
- (f) an allowance payable for the performance of higher duties;
- (g) an allowance payable by reason of the Member being on call;
- (h) an allowance payable for being required to be in charge of staff, equipment or premises;
- (i) an allowance payable in lieu of regular overtime or extra duty; and
- (j) an allowance payable as compensation for physical hardship or discomfort associated with the performance of particular duties,

or, subject to part 1.2 and clause 1.16.5, another amount, or an amount calculated in another manner, as notified to the Trustee by the Employer, either generally or in any particular case, from time to time.

“Salary” means in relation to a Member who is a Former Division 8 Member or a Sensis Member, an amount determined at each Review Date representing the Member’s ordinary remuneration but not including the value of any bonus, commission, overtime or like components provided that the Employer may determine such components should be included or that “Salary” of a Member or Members should be determined to be another amount or calculated in another manner either generally or in a particular case or for a particular purpose.

“Sensis Member” means a Member of this division 6 who is an employee of the Associated Employer Sensis Pty Ltd ACN 007 423 912, or Life Events Media Pty Limited ACN 118 014 298, and who is not a Former Division 8 Member.

“Total and Permanent Disablement” in relation to a Member:

- (a) has the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) in any policy of insurance effected by the Trustee; or
- (b) if no policy of insurance is in force in relation to the Member, means permanent incapacity as defined in the Supervision Act,

and **“Totally and Permanently Disabled”** has a corresponding meaning.

“Total Disability” in relation to a Member who has relevant cover in accordance with the terms and conditions determined by the Trustee and subject to the terms of any relevant policy of insurance -

- (a) shall have the same meaning as is given to those words (or what the Trustee considers to be the corresponding word or words) for the purposes of any policy of insurance effected or acquired by the Trustee pursuant to the Deed and under which insurance is or may become payable in the event of the disablement of any Member or group of Members (or, where there is more than one policy in force, the policy specified by the Trustee for this purpose); and
- (b) **“Totally Disabled”** shall have a corresponding meaning.

“Transfer Date” means 1 July 2001.

6.1.3 Membership.

Subject to clause 1.24.2, in the case of a Member who at any time since last becoming a member of the Fund was categorised as a member of another division, except for determining and applying the definition of Other Division Benefit as expressly provided in this division 6, the period when that Member was categorised as a member of another division, and any benefits accumulated or accrued under another division shall not be taken into account under this division 6.

Part 6.2 Member’s Account

6.2.1 Establishment.

The Trustee must cause to be maintained in respect of each Member in accordance with this part 6.2 an account to be called the Member’s Account.

6.2.2 Credits and debits – Member’s Account.

There shall be credited to a Member’s Account:

- (a) the Employer’s contributions in respect of the Member in accordance with clause 6.3.1;
- (b) any contributions by the Member in accordance with clause 6.3.2;
- (c) any amounts transferred in respect of the Member from another division of the Fund;
- (d) any amount transferred from an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to credit to the Member’s Account;
- (e) investment earnings at the Declared Rate (if positive);
- (f) any contributions made in respect of the Member as an Eligible Spouse;
- (g) any Insurance Benefit;

- (h) any amount which the Trustee determines to credit to a Division 6 MySuper Member's Member Account; and
- (i) any other amounts which this Deed may require to be credited to the Member's Account or which the Trustee may determine to credit to the Member's Account,

and there shall be debited to a Member's Account:

- (j) any amounts which the Trustee may determine to debit in respect of Tax, Fund Expenses and Group Life Insurance;
- (k) any amounts in respect of insurance premiums as determined by the Trustee;
- (l) any amount transferred to an Approved Benefit Arrangement in respect of the Member in accordance with this Deed and which the Trustee determines to debit to the Member's Account;
- (m) any amounts transferred in respect of the Member to another division of the Fund;
- (n) any benefit payable from the Member's Account;
- (o) investment earnings at the Declared Rate (if negative);
- (p) any amount which the Trustee determines to debit to a Division 6 MySuper Member's Member Account; and
- (q) any other amounts which this Deed may require to be debited to the Member's Account or which the Trustee may determine to debit to the Member's Account.

Part 6.3 Contributions

6.3.1 Employer contributions.

Unless in accordance with this Deed all contributions by the Member's Employer in respect of the Member have ceased in accordance with clause 1.19.1 because the Member is, or is eligible to become, a participant in another Approved Benefit Arrangement as a result of the operation of Part 3A of the SG Act, and subject to this part 6.3, the Employer will contribute to the Fund:

- (a) at the rate of Salary determined by the Employer from time to time either generally or in any particular case, having regard to the Employer's obligations under the SG Act;
- (b) any additional amount which the Employer may determine either generally or in any particular case.

6.3.2 Member contributions.

A Member and the Member's Spouse may make voluntary contributions as the Trustee approves from time to time and in accordance with the procedures determined by the Trustee from time to time.

Part 6.4 Benefits

6.4.1 Death or Total and Permanent Disablement benefit.

If a Member -

- (a) dies; or
- (b) suffers Total and Permanent Disablement,

there is payable to or in respect of the Member a lump sum benefit of an amount equal to the sum of -

- (c) the Member's Account Balance; and
- (d) the Member's Other Division Benefit, if any.

6.4.2 Terminal illness benefit.

If a Member suffers a terminal medical condition within the meaning of the Supervision Regulations there is payable to the Member from the Fund a lump sum benefit of an amount equal to the benefit which would have been payable under clause 6.4.1 if the Member had died on the date the benefit payable under this clause 6.4.2 is paid.

6.4.3 Income protection benefit.

- (a) **Entitlement to income protection benefit.** If a Member becomes Totally Disabled before age 65 while an Employee -
 - (1) an income protection benefit is payable to the Member, subject to the following provisions of this clause 6.4.3; and
 - (2) while that income protection benefit is payable, no other benefit shall become payable to or in respect of the Member under any other provision of the Deed except as provided for in this clause 6.4.3.
- (b) **Overriding insurance conditions.** Notwithstanding anything expressed or implied to the contrary in this clause 6.4.3 or part 1.9, if the income protection benefit is secured by Group Life Insurance effected by the Trustee, the amount of the income protection benefit and the terms and conditions of its payment are subject to adjustment to take account of the amount of, and terms and conditions of, payment of the proceeds of such Insurance.
- (c) **Amount of income protection benefit.** Subject to clause 6.4.3(b) and part 1.9, the annual amount of the income protection benefit shall be 75% of the Member's Base Salary as at the Date of Disablement but this amount shall be reduced by the amount of any other payments received by the Member from the Employer in respect of the illness or injury, as determined by the Employer and advised by the Employer to the Trustee.
- (d) **Payment and cessation of income protection benefit.**
 - (1) Subject to clause 6.4.3(b) and part 1.9, the income protection benefit is payable by monthly instalments. The income protection benefit will become payable at the

expiration of a period of three months (or any lesser period as determined by the Trustee either generally or in any particular case) after the Member's Date of Disablement (the "admission date"), with the first instalment falling due on the first day of the month coincident with or next following the admission date.

- (2) Unless another cessation date is agreed between the Trustee and the Principal Employer, the income protection benefit (subject to clause 6.4.3(b)) ceases to be payable on the date (the "cessation date") which is the earliest to occur of the following -
- (A) the date the Member ceases to satisfy the definition of Total Disability;
 - (B) the date the Member is determined to have become Totally and Permanently Disabled;
 - (C) the date of the Member's death;
 - (D) the date the Member attains age 65; and
 - (E) the date the Member has been in receipt of an income protection benefit under this clause 6.4.3 (or any equivalent predecessor clause, including any equivalent clause in respect of Members who were recategorised into this division 6 from division 8) for a continuous period of 24 months,

with the last instalment falling due on the first day of the month coincident with or next following the cessation date. The first and last instalments shall each be a proportionate amount having regard to the number of days for which the income protection benefit was payable in the previous month.

(e) **Arrangements after cessation of income protection benefit.**

- (1) If the Member continues to be, or again becomes, an Employee when the income protection benefit ceases, the Member shall continue as a Member of division 6 and the Deed shall continue to apply to and in respect of the Member.
- (2) If the Member does not continue to be, or again become, an Employee when the income protection benefit ceases, there shall be payable to or in respect of the Member from the Fund a benefit determined in accordance with the relevant provisions of division 6 on the date as at which the income protection benefit ceased to be payable.

(f) **Interpretational provisions.** For the purposes of the whole or any particular provision of the Deed, in the case of a Member who is entitled to receive an income protection benefit under this clause 6.4.3 -

- (1) the Member is deemed to have remained an Employee during the whole of the period for which the income protection benefit is payable and any deferment or waiting period for that benefit (the aggregate of such periods being hereinafter referred to as "the Disability Period"); and
- (2) during the Disability Period the Member's Base Salary shall be deemed to be equal to the Member's Base Salary immediately before the Date of Disablement or, subject to part 1.2, any greater amount as may be determined by the Employer.

6.4.4 Other benefits.

In the case of a Member who ceases to be an Employee in circumstances where no benefit is payable under clause 6.4.1, clause 6.4.2 or clause 6.4.3, there is payable to the Member a lump sum benefit of an amount equal to the sum of -

- (a) the Member's Account Balance; and
- (b) the Member's Other Division Benefit, if any.