

Zurich Master Superannuation Fund Trust Deed

Consolidated Deed as at 21 August 2015
incorporating
replacement Trust Deed dated 28 June 2001
and changes made by
Deeds of Amendment dated:

20 September 2001
11 February 2003
19 March 2004
19 August 2004
13 May 2005
1 July 2007
14 January 2009
23 May 2012
21 August 2015¹

¹ Provisions struck and replaced (where applicable) and shown in blue operate with effect from:

- (a) 1 January 2016, in relation to a person who becomes a Member using an application form:
 - (i) accompanying a product disclosure statement which provides information about the effect of clause 10.5 of the Trust Deed as amended by the deed of amendment dated 21 August 2015; and
 - (ii) completed by the person and dated 1 January 2016 or later; and
- (b) 1 July 2016, in relation to all other Members.

rosvenor Place
225 George Street
Sydney NSW 2000
Telephone: (02) 9258 6000
Fax: (02) 9258 6999

Ref: MAV

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

“**Account**” means any account maintained under this Deed.

“**Account Based Pension**” means a pension payable on the terms stipulated in rule 3.9 of Schedule 3 of this Deed or otherwise payable under the terms of the Relevant Law.

“**APRA**” means the Australian Prudential Regulation Authority.

“**ASIC**” means the Australian Securities and Investments Commission.

“**Asset Portfolio**” means a notional portfolio of assets and liabilities established and maintained under clause 6.2(f).

“**Associated Employer**” means in relation to:

- (a) a Participating Employer, a person whose application was accepted with the consent of the Participating Employer or its predecessor;
- (b) a Division, an Associated Employer who participates in that Division.

“**Auditor**” means the person appointed under clause 7.2.

“**Authorised Person**” means:

- (a) a person who is or has been a director or officer or employee of the Trustee or the Sponsoring Party;
- (b) any former director of the Trustee or the Sponsoring Party;
- (c) any agent, adviser or other person appointed by the Trustee pursuant to clause 5.3(a)(1) or clause 5.3(a)(16); or
- (d) any other person authorised by the Trustee in writing.

“**Award**” means an award, industrial agreement or other arrangement which the Trustee and the Participating Employer agree should be treated as an Award.

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

“**Benefit Arrangement**” means a superannuation fund, an approved deposit fund, an annuity or any other benefit arrangement which can pay money to the Fund, or which the Fund can pay money to, without breaching the Relevant Law, and includes a Plan.

“**Binding Death Benefit Nomination**” means a notice which satisfies the requirements of clause 10.5(b).²

“**Category**”, “**Division**” and “**Section**” have the meaning set out in clause 4.1.

² The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

"**Child**" in relation to a Member, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the Member; and
- (b) a child of the Member's Spouse; and
- (c) someone who is a child of the Member within the meaning of the *Family Law Act 1975*.

"**Child Contributions**" has the meaning as defined in SIS.

"**Child Member**" means a person:

- (a) who is a Child;
- (b) who is admitted to participate in the Fund; and
- (c) in respect of whom the Trustee accepts Child Contributions."

"**Corporations Act**" means the Corporations Act 2001 (Cth) and the Regulations prescribed under that Act.

"**Deed**" means this deed as amended from time to time, anything deemed to be included in this deed (as amended) under the Relevant Law, and any arrangement, agreement, approval, rules or procedures effected pursuant to, or as specifically provided for by, any provision of this deed (as amended).

"**Dependant**" means:

- (a) a Member's Spouse;
- (b) a Member's Child;
- (c) a person with whom the Member has an Interdependency Relationship; and
- (c) any other person who, in the opinion of the Trustee, was dependent on the Member, at the relevant date.

"**Employee**" means an employee of an Employer but includes a director and an employee as defined in SIS, at the relevant time.

"**Employee Member**" means a Employee who is a Member of the Fund.

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

"**Family Act**" means the Family Law Act 1975 (Cth) and the Regulations prescribed under that Act."

"**Financial Year**" means a year ending on 30 June or any part of such a year occurring at the commencement or termination of the Fund.

"**Full-Time Basis**", in relation to employment, means gainful employment on a full-time basis within the meaning of the Relevant Law.

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

“Fund Expenses” means the costs and expenses of and incidental to the establishment, promotion, operation, management, administration, investment, termination and winding up of the Fund or a Plan, including Tax, insurance costs and any fees or charges imposed by, or paid by, the Fund or Plan.

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

“Insurer” means Zurich Australia Limited.

“Interdependency Relationship”: For the purposes of the definition of Dependant, 2 persons (whether or not related by family) have an Interdependency Relationship if:

- (a) (i) they have a close personal relationship; and
- (ii) they live together; and
- (iii) one or each of them provides the other with financial support; and
- (iv) one or each of them provides the other with domestic support and personal care; or
- (b) (i) they have a close personal relationship; and
- (ii) they do not satisfy the requirements of paragraph (a)(ii), (a)(iii) or (a)(iv) of this definition; and
- (iii) the reason they do not satisfy any or all of those requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability.

This is subject to any regulations made under section 10A (Interdependency Relationship) of SIS.

“Legal Personal Representative” means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.³

“Member” means a person admitted as a Member of the Fund under clause 8.1, for so long as he or she participates in, or is entitled to receive a benefit from, the Fund. A Member participates in such one or more Plans, Sections, Divisions or Categories established under clause 4 as the Trustee determines and may do so concurrently or consecutively if the Trustee so determines.

“Member’s Benefit” in relation to a Member means, subject to clause 8.3, the sum of:

- (a) the balance of all Accounts maintained for the Member under the Fund which are vested in the Member pursuant to this Deed; and
- (b) the Insured Benefit (if any) in respect of the Member.

³ The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

“Net Earnings” means the return (whether positive or negative) of the Fund determined by the Trustee in accordance with clause 7.6.

“No-TFN Contributions Income” has the same meaning as in the Relevant Law.

“Nominated Beneficiary” means a beneficiary nominated under a valid Binding Death Benefit Nomination.⁴

“Original Deed” means the trust deed and rules dated 2 November 1972 (as amended from time to time).

“Participant” means:

- (a) in the case of a Personal Member, that Member; or
- (b) in the case of an Employee Member, the person's Employer; and
- (c) any other Beneficiary.

“Participating Employer” means an Employer admitted as a Participating Employer under clause 8.1, for so long as the Employer participates in the Fund.

“Participation Schedule” means a Schedule setting out the terms on which a Participant will participate in the Fund, to the extent that those terms are not set out otherwise in the Deed, including participation in one or more Plans, Sections, Divisions or Categories established under clause 4 on a concurrent or consecutive basis or both.

“Part-Time Basis” in relation to employment, means gainful employment on a part-time basis within the meaning of the Relevant Law.

“Personal Member” means a person who joins the Fund other than as an Employee Member.

“Plan” means a benefit arrangement established pursuant to Part 4 under a Schedule to this Deed and where relevant includes and refers to a Category, Division and Section.

“Power” means a power, right, discretion, remedy or authority of any nature.

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

“Probate Limit” means an amount determined by the Trustee from time to time and notified to the Members, initially \$100,000.⁵

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

“Regulator” means APRA, ASIC or any other person or authority regulating the operation of superannuation funds including any other person, body, authority or entity duly lawfully

⁴ The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

⁵ The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed

authorised by any competent government to give directions, instructions or rulings in relation to the Fund which are either:

- (a) legally required to be followed; or
- (b) the non compliance with which may result in the Fund, the Trustee, a Participating Employer, a Member, a Member's Dependants or a Member's personal legal representative having any Tax or other concessions withdrawn or modified or being subject to any additional, further or new Tax or other penalty of any kind whatsoever.

The expression Regulator includes, where relevant, the Commissioner of Taxation.

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

"Relevant Law" means:

- (a) SIS;
- (b) the Family Act;
- (c) the Corporations Act;
- (d) the Tax Act; and

any regulation, replacement or additional Commonwealth or State law or administrative rulings, circulars, guidelines or instruments which govern superannuation and which apply to the Fund or any other present, future or proposed legal requirements which the Trustee is legally obliged to comply with or which the Trustee must comply with to obtain the maximum Tax concessions available to the Fund including any proposed requirements which the Trustee believes will have retrospective effect.

"Reversionary Pensioner" means the person (if any) nominated by a Member to:

- (a) continue to receive as a pension after the death of the Member, the residue of the Member's Benefit being paid as a pension under Schedule 3 of this Deed;
- (b) whose nomination was approved by the Trustee ~~under clause 10.5(b)(2) under this Deed~~⁶ before the first pension payment was made to the Member; and
- (c) who survives the Member and in the case of a Spouse remains a Spouse of the Member on the Member's death.

"Revision Date" means 30 June 2001.

"Rules" means rules of participation referred to in clause 4.1(b).

"Salary" means a Member's annual rate of ordinary salary or wages for services performed for the Employer, and includes director's fees, cost of living allowances, commissions and bonuses, but excludes payment of overtime, expense or similar allowances and other special payments. A Participating Employer may establish some other basis for determining the Salary of a Member.

⁶The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

“**Schedule**” means a schedule attached to or formulated under the Deed as may at any time or from time to time be amended in the manner described in Clause 3.1 of this Deed, or in the case of a Participation Schedule in the manner described in clause 8.1(d)..

“**SIS**” means the Superannuation Industry (Supervision) Act 1993 (Cth) and the Regulations prescribed under that Act.

“**Sponsoring Party**” means:

- (a) the Insurer;
- (b) any other organisation which, with the consent of the Insurer, substantially assumes the role or activity substantially performed by a Sponsoring Party under this Deed; or
- (c) if any Sponsoring Party ceases to exist and its role or activity is not assumed in accordance with paragraph (b) of this definition, a remaining Sponsoring Party.

“**Service**” means the most recent continuous service of a Member as an Employee Member and includes:

- (a) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the Participating Employer or any insurance scheme sponsored by the Participating Employer; and
- (b) any other period declared by the Participating Employer to be Service.

“**Specified Member**” means a person referred to in clause 15.6 of the Original Deed.

“**Spouse**” in relation to a Member, includes:

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

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

“**Tax Act**” means the Income Tax Assessment Act 1936 (Cth).

“**Total and Permanent Disablement**” means:

- (a) if the benefit, or part of the benefit, payable on total and permanent disablement is insured, the definition of total and permanent disablement in the policy document evidencing the contract of insurance; or
- (b) if no such policy is in force:
 - (1) the Member suffering the loss of two limbs or the sight of both eyes or the loss of one limb and the sight of one eye, where limb means the whole of one hand or the whole of one foot; or

- (2) the Member having been absent from gainful employment through injury or illness for six consecutive months (or such shorter period as the Trustee shall decide) and in the opinion of the Trustee after consideration of such medical evidence as it may require having become incapacitated to such an extent as to render the Member unlikely ever to resume any regular remunerative work for which the Member is suited by reason of the Member's education training or experience,

and "**Totally and Permanently Disabled**" has a corresponding meaning. For the purposes of paying a Preserved Benefit, the Trustee may only regard a Member as being Totally and Permanently Disabled if the disablement constitutes "permanent incapacity" within the meaning of that expression in the Relevant Law.

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

"**Transition to Retirement Income Stream**" means a pension payable on the terms of rule 3.10 of Schedule 3 of this Deed or as otherwise payable under the Relevant Law.

"**Trustee**" means the person appointed as trustee of the Fund from time to time.

"**Unit**" means an undivided part or share of an Asset Portfolio created by the Trustee under clause 7.7.

"**Unit Class**" means a class of Units referable to a particular Asset Portfolio.

"**Unit Price**" means the applicable price of a Unit as determined by the Trustee under clause 7.7.

1.2 Defined Terms

An expression used in this Deed which is defined in the Relevant Law has the same meaning in this Deed unless the context otherwise requires.

1.3 Interpretation

- (a) **Amended provisions:** a reference to a document (including this Deed) includes a change or supplement to, or replacement or novation of that document.
- (b) **Deed binding:** the provisions of this Deed as well as all approvals and acts under this Deed are binding on all Members and other Participants and form the sole agreement between the Trustee and the Participant in relation to the matters dealt with by this Deed.
- (c) **Paramount provisions:** the provisions of Part 2 override any other provisions of this Deed.
- (d) **Rules of interpretation:** the rules of interpretation set out in sections 6, 7, 8 and 9 of the Interpretation Act 1987 (NSW) apply to this Deed (except that any reference to that Act in those sections is to be taken as a reference to this Deed) and without limitation:
 - (1) a reference to a person includes a body corporate, partnership, joint venture or association; and
 - (2) a reference to the singular includes the plural and vice versa.

- (e) **Severance:** to the extent that any provision, or part of a provision, of this Deed infringes the Relevant Law or is invalid for any other reason whatsoever:
 - (1) that provision, or part, must be read down, changed, construed or severed to avoid such infringement or invalidity; and
 - (2) to the extent that such infringement or invalidity cannot be avoided, the provision, or part, will be of no effect and will not affect the remainder of this Deed.
- (f) **Statutory enactments:** a reference to any statute or other law includes all laws changing them, and includes all laws, regulations, modification orders and any other instruments issued under them.
- (g) **Headings:** headings are for convenience only and do not affect the interpretation of this Deed.
- (h) **Inclusions:** the use of the word “including” in a provision as an introduction to a list of things does not limit that provision to that list or to things of a similar nature.
- (i) **Exercise of Powers:** Subject to any provision of this Deed to the contrary, the Trustee, in the exercise of its Powers, has an absolute discretion and may from time to time:
 - (1) exercise and enforce all or any of such Powers; and
 - (2) refrain from exercising, or considering exercising, or otherwise not exercise all or any such Powers.

2. PARAMOUNT PROVISIONS: COMPLIANCE WITH RELEVANT LAW

2.1 Compliance

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

2.2 Deemed Compliance

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

- (a) the Regulator is satisfied that the Trustee has complied with the Relevant Law;
- (b) the Regulator determines that the Fund will be treated as if it had complied with the Relevant Law; or
- (c) the Regulator has advised the Trustee that it will not take action against the Trustee or the Fund in respect of a failure to comply with the Relevant Law.

2.3 Specific Requirements

If a provision of this Deed would otherwise be void because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee,

the Trustee’s consent is required for the giving of the direction or the exercise of the discretion.

2.4 Power to comply with Family Act

The following provisions apply notwithstanding any other provision of this Deed:

- (a) the Trustee may in accordance with the Relevant Law:
 - (1) provide a Non-Member Spouse (as defined in the Family Act) or any other person with information (including, without limitation, information in relation to a Member's interest in the Fund);
 - (2) give effect to a superannuation agreement, payment flag, flag lifting agreement (within the meaning of those expressions in Part VIIIIB of the Family Act) or any other agreement or court order made pursuant to Part VIIIIB of the Family Act, in relation to a Member's interest in the Fund;
 - (3) give effect to a payment split under Part VIIIIB of the Family Act ("**Payment Split**") in relation to a Member's interest in the Fund including, without limitation:
 - (A) creating a new interest in the Fund for the Non-Member Spouse (as defined in the Family Act) in the circumstances permitted by the Relevant Law;
 - (B) rolling over or transferring to another Benefit Arrangement, the entitlement of the Non-Member Spouse (as defined in the Family Act) under the Payment Split in the circumstances permitted by the Relevant Law;
 - (C) paying to the Non-Member Spouse (as defined in the Family Act), the entitlement of the Non-Member Spouse under the Payment Split in the circumstances permitted by the Relevant Law;
 - (D) reducing the entitlement of the Member, or any other person to whom the Member's interest would have been paid, by the amount of the entitlement of the Non-Member Spouse (as defined in the Family Act) under the Payment Split;
 - (E) commuting a pension or annuity payable from the Fund; and
 - (F) apportioning the "minimum benefits", "preserved benefits", "restricted non preserved benefits" and "unrestricted non preserved benefits" (within the meaning of those expressions in the Relevant Law) as between the Member's interest in the Fund and the entitlement of the Non-Member Spouse (as defined in the Family Act) under the Payment Split; and
 - (4) charge, and deduct from amounts payable from the Fund, fees in respect of any matter or thing done under this clause, an application for information about a Member's interest in the Fund or any other thing done pursuant to Part VIIIIB of the Family Act.
- (b) The Trustee must treat the Non-Member Spouse (as defined in the Family Act) as a Member where required by the Relevant Law.
- (c) The Trustee may do anything else whatsoever that it considers necessary or desirable to comply with the Relevant Law.

3. CHANGES TO DEED

3.1 Changes

- (a) The Trustee may, by deed, either prospectively or retrospectively alter, add to, modify, remove or replace all or any provisions of this Deed (each called a “change”) without the consent of Members and Participating Employers subject to clauses 3.1(b), (c) and (d) below.
- (b) No change may be made to this Deed which will have the effect of causing the Fund to cease to be approved by the Regulator under any provision of the Relevant Law, except with the consent of the Sponsoring Party.
- (c) No change may be made to this Deed which will reduce, vary or in any way limit or adversely affect any benefits or entitlements accrued to a Member or adversely affect the basis for the calculation of retirement benefits and other benefits or entitlements of the Member in respect of the Member's period of membership to the date such change is made or comes into effect unless such change is made:
 - (1) to comply with the provisions of the Relevant Law;
 - (2) in circumstances required by the Relevant Law or permitted or sanctioned by SIS and approved, where required, by the Regulator; or
 - (3) with the consent in writing of the Member or the Regulator.
- (d) No change will be made which affects the rights a Specified Member has in respect of benefits except in the circumstances permitted by the Original Deed as it existed immediately prior to the Revision Date.

4. PLANS

4.1 Establishment of Plans

- (a) The Trustee may:
 - (1) establish one or more Plans (either as part of the Fund or as a separate superannuation fund), Sections, Divisions or Categories.
 - (2) further subdivide the Plans, Sections, Divisions or Categories, on such terms and conditions as it determines.
- (b) The terms and conditions on which a Plan, Division, Section or Category is established and the rights of Members and other Participants will be governed by this Deed and include:
 - (1) any Rules set out in a Schedule; and
 - (2) any Rules of participation set out in an application or Participation Schedule which have been approved by the Trustee.
- (c) In the case of any inconsistency between
 - (1) the terms of participation contained in the Deed and those contained in the Rules, those in the Deed will prevail; and

- (2) the terms of participation contained in the Rules and those contained in an application or Participation Schedule, those in the Rules will prevail,
unless the Trustee determines to the contrary.

4.2 Existing Plans

On and from the Revision Date, the Fund consists of:

- (a) one Plan being the Zurich Master Superannuation Fund;
- (b) two Sections being:
 - (1) the Master Superannuation (or Masterfund) Section; and
 - (2) the Corporate Mastertrust (or Mastertrust) Section;
- (c) three Divisions being:
 - (1) the Masterfund Employee Division;
 - (2) the Masterfund Gainfully Employed Persons Division; and
 - (3) the Masterfund Pension Division.

4.3 Operation of Plans

Any liability which in the Trustee's opinion:

- (a) relates to a Plan must not be satisfied from the assets, or the benefits, relating to Members and other Participants in any other Plan; and
- (b) relates to one Division, Section or Category must not, be satisfied from the assets, or the benefits, relating to Members and other Participants in any other Division, Section or Category,

unless the Trustee otherwise determines.

5. TRUSTEE

5.1 Appointment and removal of Trustee and Directors

- (a) The Trustee may be removed from the office of Trustee by notice or deed by the Sponsoring Party where permitted by the Relevant Law.
- (b) The Trustee may, by notice in writing to the Sponsoring Party, retire from office if another person eligible under the Relevant Law immediately assumes the office of Trustee.
- (c) The Trustee must cease to act as the trustee of the Fund if:
 - (1) the Trustee is removed from the office of Trustee pursuant to one or more resolutions passed at a meeting of the Beneficiaries of the Fund in the circumstances prescribed by the Relevant Law; or
 - (2) a receiver or liquidator of the Trustee is appointed; or

- (3) an order is made, or a resolution passed for the Trustee to be wound up; or
 - (4) the Trustee is disqualified from acting as the trustee of the Fund by operation of any Act of Parliament.
- (d) Upon the Trustee ceasing to act pursuant to clause 5.1(c), the Sponsoring Party must immediately appoint a new Trustee which may be a person related to, or associated with, the Sponsoring Party.
- (e) Upon ceasing to hold the office of Trustee, the Trustee must, at the expense of the Fund, do everything necessary to:
- (1) transfer all of the assets of the Fund; and
 - (2) deliver all records, title documents, accounts, registers and other documents relating to the Fund,
- to the new or replacement Trustee or its nominee.
- (f) The Trustee must be a constitutional corporation unless the Trustee determines that the sole or primary purpose of the Fund is the provision of old-age pensions.
- (g) A person may only be appointed as Trustee, or as a director of the Trustee, if that person consents in writing to the appointment.

5.2 Records of change of Trustee

The Trustee must keep:

- (a) a record of changes in the Trustee and in the directors of the Trustee; and
- (b) the written consents of Trustees and directors of the Trustee,

for such period as is required by the Relevant Law.

5.3 The Trustee's Powers

- (a) Subject to this Deed and in particular clause 6.1, the Trustee has complete management and control of the Fund as if it were a natural person owning the Fund and is completely unrestricted in the exercise of its Powers. It may do anything it considers appropriate to properly administer and maintain the Fund, exercise any Power and perform its duties, including:
- (1) **advisers, agents, delegates and other appointments:** appoint advisers, agents, custodians, secretaries, administration or investment managers, delegates, nominees to hold investments and any other persons to perform any functions (and in all instances those appointees may be related to the Trustee) including Powers to receive and expend monies of the Fund, to promote and market the Fund, to advise Members and other Participants and prospective Members and other Participants in relation to the Fund, receive applications to participate in the Fund, to deal with insurance policies and to keep accounts on such terms (including terms as to remuneration) as the Trustee determines;
 - (2) **bank accounts:** open, deposit into and regulate the operation of bank accounts and such bank accounts may be used for other purposes and contain amounts

not belonging to the Fund provided the Trustee must at all times maintain full records of the amounts belonging to the Fund;

- (3) **benefits:** without limiting clause 5.3(a)(14)(A), conclusively calculate and determine the amount of benefits, the identity of persons entitled to such benefits and the manner in which the benefits are to be paid, including the payment of benefits by way of pension or annuity, and may delay payment of benefits until assets of the Fund can reasonably be disposed of;
- (4) **borrowing:** make any borrowing, and secure any payment or repayment, if permitted by the Relevant Law;
- (5) **determinations:** determine questions of fact and act on such proofs or presumptions as it may consider satisfactory whether or not the same be strict legal proofs or presumptions;
- (6) **Fund Expenses:** to be indemnified for, to make provision for, to be reimbursed for, and to determine the allocation and attribution of, Fund Expenses;
- (7) **indemnities and undertakings:** give indemnities and undertakings, including a guarantee or indemnity in respect of an obligation assumed or undertaken by the Trustee in connection with the Fund;
- (8) **insurance:** arrange one or more policies of insurance for the payment of benefits in respect of any Beneficiary or class or group of Beneficiaries or in respect of any other risk or liability whatsoever of the Fund, or of the Trustee or its directors;
- (9) **legal proceedings:** commence, discontinue, prosecute, defend, settle, compromise or arbitrate any proceedings by or against the Fund or the Trustee or otherwise concerning the Fund or this Deed and compound or allow time for payment or satisfaction of a debt due to the Fund or the Trustee or of a claim or demand by or against the Fund or the Trustee or pay or charge interest in respect of any amount involved in any such proceedings;
- (10) **old-age pensions:** determine that the sole or primary purpose of the Fund is the provision of the old-age pensions;
- (11) **orders:** to act on a direction or order of a Court or the Regulator or the Superannuation Complaints Tribunal, established under the Superannuation (Resolution of Complaints) Act 1993;
- (12) **provisions:** set aside any amounts from the Fund as a provision against any Fund Expense or other outgoing contemplated by or which may be made under this Deed and amounts against which the Trustee reasonably believes it is indemnified;
- (13) **receipts, releases and discharges:** give receipts, releases and other discharges for monies payable to the Fund or the Trustee, and claims and demands of, or against, the Fund or the Trustee;
- (14) **rules and procedures:** make rules and adopt procedures in relation to the Fund, including:
 - (A) the calculation and rounding-off of contributions, benefits and interest;

- (B) the minimum amounts that can be accepted or retained in the Fund;
 - (C) which persons can sign documents in connection with the Fund;
 - (D) the establishment and operation of policy committees including rules providing for expenses relating to the policy committee to be paid by Participating Employers;
 - (E) the establishment and operation of arbitration and dispute resolution procedures;
 - (F) the determination of periods of time; and
 - (G) any other matters which the Trustee considers appropriate for the convenient administration of the Fund;
- (15) **Tax:** do anything it considers appropriate in respect of any Tax, including:
- (A) reducing or adjusting any benefit or amount before paying the benefit or amount;
 - (B) establishing reserves and making provision for Tax; or
 - (C) making arrangements whereby another party pays or provides for the Tax liability of the Fund; or
 - (D) paying any amount in satisfaction of a Release Authority given to the Trustee for the payment of an excess contributions tax assessment.
- (16) **power of attorney:** to delegate (by Power of Attorney or otherwise) to any person or company any of the powers, duties and discretions vested in the Trustee on such terms and conditions as the Trustee determines and the Trustee will not be responsible for any loss incurred as a result of such delegation; and
- (17) **Trustee's incidental Power:** do anything necessary or incidental to the exercise of any Power by the Trustee.

5.4 **Payments to Trustee**

- (a) The Trustee may charge fees in respect of the services it provides to the Fund but only:
 - (1) in respect of Members who last became Members prior to the Revision Date, to the extent of the fees and charges which could have been charged by the Insurer under policies held by the Trustee under the trusts of the Fund as at the Revision Date in lieu of such fees and charges being charged by the Insurer; and
 - (2) in respect of Members who last became Members on or after the Revision Date.
- (b) The amounts chargeable under clause 5.4(a) may be charged at different levels and otherwise attributed differently as between different Plans, Sections, Divisions, Categories and Members.

- (c) Where a person performs work for the Fund (including any work performed as a director of the Trustee), the Trustee may:
- (1) if the work is done in the person's personal capacity - pay the person; or
 - (2) if the work is done in the person's capacity as a partner or employee of a firm or organisation - pay the firm or organisation,

from the Fund the reasonable fees of that person or firm or organisation (as the case may be) for the work so performed.

5.5 Liability and Indemnity of Trustee

- (a) To the extent permitted by law and subject to clause 5.5(b), the Trustee and each Authorised Person is exempted and may be indemnified from the Fund in respect of all liability incurred while acting in relation to the Fund including in respect of the acts or omissions of any person referred to in clause 5.3(a)(1) or any other agent or delegate of the Trustee;
- (b) Clause 5.5(a) does not apply to the Trustee, or a director of the Trustee where:
- (1) the Trustee or the director has been dishonest; or
 - (2) the Trustee or the director has intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence the Trustee or the director is or was required to exercise; or
 - (3) prohibited under the Relevant Law.
- (c) Neither the Insurer nor the Trustee is not liable for any damage or loss suffered (whether direct or indirect) by a Beneficiary or prospective Beneficiary (or any person claiming through a Beneficiary or prospective Beneficiary) by reason that the Beneficiary or prospective Beneficiary relied upon any advice provided by the Trustee or the Insurer, their employees, agents or representatives in relation to any matter relating to the Fund including (without prejudice to the generality of the foregoing)
- (1) whether a Member or prospective Member should apply for membership of the Fund or maintain membership of the Fund;
 - (2) whether a Member should maintain, increase or reduce contributions to the Fund;
 - (3) whether a Member should apply for risk cover through the Fund and, if so, the amount and type of risk cover or whether the Member should increase or reduce the amount of cover or apply for additional types of risk cover through the Fund; and
 - (4) whether a Member should, in any way, alter the Member's current investment strategy or strategies applying to the Member's interests in the Fund.
- (d) A Beneficiary or Employer must indemnify the Trustee for:
- (1) any liability incurred; or
 - (2) any overpayment made; or

- (3) any failure to provide for Tax;

as a result of the Trustee relying on information given to it by that Beneficiary or Employer.

5.6 Reliance on opinions, advice or information

The Trustee and each Authorised Person:

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

5.7 Action notwithstanding interest

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

5.8 Exercise of Discretions

- (a) Each Authorised Person may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise.
- (b) Each Authorised Person is completely unrestricted in the exercise of their powers, determinations and discretions.

6. INVESTMENTS OF FUND

6.1 Authorised investments

- (a) The Fund must be invested in policies issued by the Insurer. However, the Sponsoring Party may approve that:
 - (1) the Trustee accept the assignment of a policy not issued by the Insurer; or
 - (2) the Trustee otherwise invest the Fund in the discretion of the Trustee.
- (b) Where the Trustee receives the approval referred to in clause 6.1(a)(2), the Trustee may make any investment or deal with or deploy the assets of the Fund in any manner which the Trustee considers suitable as if it was the sole and absolute legal and beneficial owner of those assets, including:
 - (1) **loans:** make a loan if permitted by the Relevant Law;
 - (2) **futures, hedging and synthetics:** participate in, in any capacity, any synthetic investment, including a futures contract, hedge contract, swap contract or option contract, whether or not related to any other property forming part of the Fund;

- (3) **indemnity:** give a guarantee or an indemnity in respect of or become liable for or in respect of the performance of any obligations by any person (including the obligations of the trustee of another Benefit Arrangement from which the Trustee has accepted Members into the Fund);
 - (4) **lease, mortgage, etc:** lease, mortgage, charge, license or otherwise deal in any way with any property of the Fund;
 - (5) **mix property:** mix property of the Fund with any other property, other than where prohibited by the Relevant Law, provided the Trustee must at all times maintain separate records to enable identification of the property of the Fund; and
 - (6) **no income:** invest in any property which does not produce income or which is speculative.
- (c) To the extent that the Fund is invested in a policy with the Insurer, the Insurer's records and accounts of the interests of Beneficiaries in respect of the policy must record and represent the interests of those Beneficiaries in the Fund.

6.2 Member Directed Investments

- (a) The Trustee may, where permitted by the Relevant Law, and subject to clause 6.1, hold specific investments for separate Members or classes or groups of Members.
- (b) The Trustee may (but is not obliged to) provide a Member or a class or a group of Members the ability to request or to direct that a specific investment be made in respect of the Member or the Members of that class or group being:
 - (1) a range of investment options or investment strategies; or
 - (2) where permitted by the Relevant Law, an investment in a specific asset.
- (c) The Trustee may:
 - (1) in its absolute discretion, decline to implement a specific investment request by a Member or a specific investment direction from a Member, if such direction is contrary to Relevant Law;
 - (2) prior to carrying out a Member's request or direction to make a specific investment or to change a specific investment, seek evidence of the Member's consent to the investment or change;
 - (3) impose conditions on the manner in which requests or directions for specific investments, or changes to specific investments, may be made, including:
 - (A) the minimum amount that may be invested in any specific investment;
 - (B) the time or times, and the frequency in relation to which specific investments may be made or changed; and
 - (C) the fees that can be charged in relation to making or changing any specific investment (including a fee for switching between classes of Units);

- (4) adopt a default investment strategy to apply in respect of Members who do not make a request or give a direction under clause 6.2(b); and
 - (5) in its absolute discretion close or withdraw any specific investment and may transfer Beneficiaries from one specific investment to another.
- (d) A specific investment for a Member or a class or group of Members is made for the sole benefit of and at the sole risk of the Member or the Members of the class or group such that any income or gains or losses or expenses incurred in respect of that specific investment must be attributed to that Member or class or group.
 - (e) Neither the Trustee nor the Sponsoring Party is liable for the acquisition, delay in acquiring, retention, failure to dispose of, the performance of, or for any loss attributable to, a specific investment.
 - (f) For the purposes of this clause, the Trustee may establish and maintain one or more Asset Portfolios within the Fund, a Plan, a Division, a Section or a Category and may, at any time, combine, split, close, rename and restructure and determine the Members who will participate in, the Asset Portfolios.
 - (g) The Trustee may from time to time:
 - (1) vary the holdings and other specifications of an Asset Portfolio; and
 - (2) notionally allocate the assets and liabilities of the Fund to the Asset Portfolios, in such manner as the Trustee determines to be appropriate.
 - (h) The Asset Portfolios do not constitute separate trust funds.

6.3 Insurance

- (a) The Trustee may:
 - (1) deal with any policies it has invested in any manner which the Trustee considers suitable as if it were the sole and absolute legal and beneficial owner of those policies; and
 - (2) effect and maintain such policies on such terms and conditions and for such periods as the Trustee thinks fit,
 subject to clause 6.1(a).
- (b) The Trustee may accept the assignment of a policy of insurance on such terms as the Trustee, in its absolute discretion, determines, subject to clause 6.1.
- (c) The amount of an Insured Benefit and the payment of an Insured Benefit to a Beneficiary from the Fund is subject to the Beneficiary providing the Trustee with all relevant information required by the Insurer and, if required, submitting to any medical examination from time to time.
- (d) If a Beneficiary's date of birth is incorrectly stated or if other information supplied to the Trustee or the Insurer is incorrect or incomplete, the Trustee may adjust the Insured Benefit payable to a Beneficiary from the Fund on such basis as the Trustee considers equitable.

- (e) The amount of any Insured Benefit payable to a Beneficiary from the Fund is subject to the Trustee being able to insure for the desired amount and for the events giving rise to payment of that amount.
- (f) If, for any reason, the Trustee is unable to insure or otherwise fails to insure any benefit payable under this Deed, or if, for any reason, the Insurer (with which the Trustee seeks to insure all or any of the benefits payable under this Deed) declines to accept the proposal for insurance or will only accept the proposal on terms and conditions which the Trustee regards as unacceptable, the Trustee may reduce the Insured Benefit payable to a Beneficiary from the Fund by such amount as the Trustee considers equitable.
- (g) Without limitation to clause 10.3 if, for any reason, the Insurer fails to pay, reduces or defers payment of, any part of the Insured Benefit or imposes terms and conditions on which the Insured Benefit is payable, the Trustee may reduce the Insured Benefit payable to a Beneficiary from the Fund by such amount as the Trustee considers equitable.
- (h) The Trustee may pay the premiums and costs of any insurance policy or policies maintained in respect of a Beneficiary from such of the Accounts maintained in respect of the Beneficiary as the Trustee determines.
- (i) If the balance of the Accounts maintained in respect of a Beneficiary is insufficient to meet the premiums and costs of any insurance policy or policies attributable to that Beneficiary, then:
 - (1) the Trustee is not bound to pay such premiums and costs from the Fund in respect of the Beneficiary; and
 - (2) the Trustee is not liable to the Beneficiary for the Insurer:
 - (A) failing to pay, or reducing or deferring payment of the Insured Benefit; or
 - (B) failing to renew the relevant policy.

6.4 Segregation of Assets

The Trustee may segregate (physically or notionally) particular assets of the Fund from other assets including, but not limited to, assets used to fund the payment of pensions.

7. ACCOUNTS AND RECORDS

7.1 Accounts and Records

The Trustee must keep records and financial accounts of the Fund as required by the Relevant Law. The Trustee otherwise has full power to keep records and accounts of the Fund.

7.2 Auditor

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

7.3 Accounts

- (a) The Trustee may maintain any Accounts it determines including Accounts to:

- (1) record the benefits of the Members;
 - (2) provide for any Fund Expenses payable by the Fund;
 - (3) deal with investment fluctuations; and
 - (4) record any reserves maintained by the Fund.
- (b) Without limiting the generality of clause 7.3(a), the Trustee may establish a Taxation Reserve Account.

7.4 Taxation Reserve Account

- (a) The Trustee may credit the Taxation Reserve Account with:
- (1) amounts which the Trustee determines from time to time to set aside from the contributions to, or the earnings of, the Fund; and
 - (2) amounts which the Trustee determines from time to time to transfer to the Taxation Reserve Account from other Accounts in the Fund,
 - (3) any amount received as a Tax rebate or off-set obtained by the Fund including in relation to Tax previously paid by the Fund on No-TFN Contributions Income in respect to a Member.

for the purpose of providing and paying for any Tax payable by the Fund (including to pay any liability under a Release Authority on behalf of a Member) or to receive any Tax rebate, credit or off-set and any other contingencies of the Fund.

- (b) The Trustee may debit the Taxation Reserve Account for:
- (1) any Tax paid;
 - (2) any amounts which the Trustee determines from time to time to transfer to Members' Accounts; and
 - (3) any amounts which the Trustee determines from time to time to transfer to one or more reserve or provision accounts or any other accounts established and maintained by the Trustee for the purposes of the Fund.

7.5 Other Accounts

- (a) The Trustee must credit the Accounts with:
- (1) any portion of the Fund's assets which the Trustee determines;
 - (2) (where applicable) any positive Net Earnings and any amounts which the Trustee attributes to the Member pursuant to clause 6.2(d); and
 - (3) any other amounts which the Trustee determines from time to time to allocate to the Accounts.
- (b) The Trustee must debit the Accounts with:
- (1) any proportion of the premiums and costs in respect of any insurance policy or policies maintained in respect of Members which the Trustee determines;

- (2) any Fund Expenses which the Trustee determines from time to time;
 - (3) any amounts which the Trustee determines from time to time to transfer to the Taxation Reserve Account in respect of providing and paying for any Tax and/or Fund Expenses payable by the Fund (including to pay any liability under a Release Authority on behalf of a Member) and any other contingencies of the Fund;
 - (4) any amounts which the Trustee determines from time to time to transfer to one or more reserve or provision Accounts or any other Accounts maintained by the Trustee for the purposes of the Fund;
 - (5) (where applicable) any negative Net Earnings and any amounts which the Trustee attributes to the Member pursuant to clause 6.2(d); and
 - (6) any other amounts which the Trustee determines from time to time to debit the Accounts.
- (c) On the winding up of the Fund, any amounts recorded in Accounts maintained for the purposes set out in clauses 7.3 (a)(2), (3) and (4) which is not required to meet Fund Expenses including the expenses of winding up must be credited to the Accounts of Members in proportion to the amounts standing to the credit of those Members' Accounts at the time, or on such other basis as the Trustee considers equitable.

7.6 Net Earnings

Subject to clause 6.2(d) and clause 7.7(f):

- (a) Net Earnings must be determined and must be:
 - (1) attributed to Members;
 - (2) allocated to any Account or Asset Portfolio; or
 - (3) otherwise dealt with in accordance with this Deed,
 in the manner determined by the Trustee;
- (b) the Trustee may, at such times as it considers appropriate, make an interim determination of Net Earnings and make interim allocations in accordance with this Deed;
- (c) without limiting clause 7.6(a), Net Earnings may be allocated by declaring:
 - (1) one or more interest or earning rates (positive or negative) in respect of Members or classes or groups of Members; or
 - (2) in the case of an interim allocation made under clause 7.6(b), one or more interim interest or earning rates (positive or negative) in respect of Members or classes or groups of Members as determined by the Trustee, whether or not such a determination is made in advance; and
- (d) in determining Net Earnings, the Trustee must take into account the assets (including unrealised assets) and liabilities (including unrealised liabilities) and otherwise may adopt whatever assumptions, methodology and procedures it considers appropriate, including:

- (1) methodology and procedures concerning the method and basis of valuing particular property;
- (2) the intervals at which valuations must be carried out; and
- (3) the reserving or averaging of income.

7.7 Unitisation

- (a) The Trustee may divide the Asset Portfolios into Units and allocate the Units to the Accounts in a manner consistent with the applicable investment strategy.
- (b) The Trustee may adopt rules from time to time in relation to:
 - (1) the pricing of the Units (including separate "buy" and "sell" prices and the timing and frequency of the pricing);
 - (2) switching between Unit Classes;
 - (3) the method and frequency of valuing the Asset Portfolios; and
 - (4) any other matter which the Trustee determines to be necessary or appropriate for administering the Fund as a unitised fund.
- (c) Accounts may be recorded in Units of the relevant Unit Classes. Any amount credited or debited to an Account may be converted into Units of the relevant Unit Classes immediately prior to being credited to the Account.
- (d) Where this Deed provides for or contemplates any amount (including, but not limited to fees, Fund Expenses and Tax) to be credited or debited to an Account, the Trustee may credit or debit (as the case may be) the relevant number of Units having regard to the relevant Unit Price.
- (e) Where this Deed refers to the balance, or the amount standing to the credit, of an Account, it will (where appropriate) be taken as a reference to the amount or balance calculated by reference to the number of Units in the Account and the relevant Unit Price.
- (f) If and to the extent that the Trustee administers the Fund's investments on a unitised basis, the Trustee may elect that clause 7.6 does not operate and the remaining provisions of this Deed must be construed accordingly.

8. PARTICIPATION IN FUND

8.1 Participation

- (a) Subject to Relevant Law, a person:
 - (1) who is an individual and is eligible under the Relevant Law to become a Member, may apply for membership of the Fund;
 - (2) may apply for membership of the Fund on behalf of any other person who is eligible under the Relevant Law to become a Member (including an Employee or a Child Member); or
 - (3) may apply for participation in the Fund as a Participating Employer,

in a form and on conditions approved by the Trustee, including participation in one or more Plans, Sections, Divisions or Categories established under clause 4 on a concurrent or consecutive basis or both.

- (b) The Trustee may, but is not obliged to, require an application from a person who is an Employee of a Participating Employer.
- (c) An application by a Participating Employer must contain a Participation Schedule unless otherwise determined by the Trustee.
- (d) An application and a Participation Schedule may be amended:
 - (1) by the Trustee to comply with the Relevant Law, or
 - (2) subject to the Relevant Law, be otherwise amended by the Trustee and the person who submitted the application or Participation Schedule.
- (e) A person becomes a Member or other Participant from the date the Trustee accepts the application or such other date determined by the Trustee.
- (ea) Upon a person becoming a Member, the Trustee:
 - (1) shall further determine which one or more of the Plans, Sections, Divisions or Categories established under clause 4 the Member shall participate in;
 - (2) may determine that the Member shall participate in more than one Plan, Section, Division or Category on a concurrent or consecutive basis or both; and
 - (3) subject to the Relevant Law, must move the Member between such Plans, Sections, Divisions or Categories where required to do so by this Deed, and may do so at such other times as it determines.
- (eb) Subject to the Relevant Law, the Trustee may impose conditions on a Member's participation in a Plan, Section, Division or Category of the Fund.
- (f) The Trustee may in its absolute discretion reject an application or delay consideration of an application or make the application subject to conditions.
- (g) The Trustee may in its absolute discretion:
 - (1) accept a payment by or in respect of a person who has not applied to become a Member or other Participant in the Fund, in which case the person is taken to be a Member or other Participant from the date of such acceptance of payment or such other date determined by the Trustee;
 - (2) without limiting clause 8.1(g)(1), determine that a person who has not applied for participation in accordance with clause 8.1(a) is a Member or other Participant on and from a date determined by the Trustee,in both instances subject to conditions approved by the Trustee.
- (h) The Trustee must deal with a person's application money:
 - (1) pending the processing and acceptance of that application; and
 - (2) where the application is refused,

in accordance with the Relevant Law.

- (i) Notwithstanding clause 6.2(b)(2), a Beneficiary has no right to claim any interest, exercise any right in any particular asset of the Fund or interfere with the Trustee's rights or powers in its dealing with the assets of the Fund.
- (j) The Trustee must within any time specified by the Relevant Law notify the Member in writing of acceptance of their participation as well as any other matters the Trustee considers appropriate.
- (k) A Member or other Participant may agree with the Trustee or where the facility is given to the Member or other Participant by the Trustee and if permitted by Relevant Law, direct the Trustee to admit a Member to a particular Category or to vary a Member's Category.
- (l) Each Beneficiary:
 - (1) irrevocably appoints the Trustee his or her attorney to do anything permitted by this Deed;
 - (2) agrees to be bound by any arbitration initiated under this Deed; and
 - (3) agrees that no right of action accrues until the relevant issues have been adjudicated on pursuant to that arbitration.
- (m) The Trustee may in its discretion apply any provisions of this Deed which relate to a Member to a Beneficiary as if the reference to a Member referred to a Beneficiary.
- (n) Notwithstanding anything in this Deed to the contrary:
 - (1) the rights and benefits of Child Members shall be subject to the Relevant Law; and
 - (2) a Child Member cannot exercise any right, power, discretion or approval which he or she is not empowered to validly exercise at law.

8.2 Cessation of participation

- (a) A Beneficiary ceases to be a Beneficiary if:
 - (1) the Trustee notifies a Beneficiary that it is no longer a Beneficiary; or
 - (2) otherwise all the benefits of the Beneficiary are paid or otherwise exhausted, satisfied or dealt with under this Deed.
- (b) A Participating Employer ceases to participate in the Fund with effect from:
 - (1) 14 business days after the date that it gives the Trustee written notice of its intention to cease being a Participating Employer or to cease contributing to the Fund;
 - (2) the date it becomes bankrupt or is placed in liquidation or ceases to carry on business; or
 - (3) the date that it receives written notice from the Trustee that it is to cease to be a Participating Employer or, where the Trustee issues a written notice to the

effect that the participation of the Participating Employer is to cease from a specified future date, then the Participating Employer shall cease to be a Participating Employer on and from the occurrence of that specified future date.⁷

- (c) Subject to Relevant Law, the Trustee may transfer an amount equal to the total of the Member's Benefit of each Member who is or was an Employee of the Participating Employer to a Benefit Arrangement nominated by the Participating Employer or if none is nominated within 90 days of the effective date under clause 8.2(b), to a Benefit Arrangement selected by the Trustee.
- (d) An Associated Employer may take the place of a Participating Employer who gives notice under clause 8.2(b)(1) if agreement is reached between the Participating Employer, the Associated Employer and the Trustee.
- (e) If the Trustee does not transfer out the Members' Benefits pursuant to clause 8.2(c), it may pay the Members their Member's Benefits and deal with any remaining money or property as it determines in its absolute discretion.
- (f) An Employee of an Employer that has ceased to be a Participating Employer will continue to be a Member of the Fund until:
 - (1) all benefits payable in respect of the Member under this Deed have been paid;
 - (2) in the circumstances permitted by the Relevant Law or by the Regulator; or
 - (3) until the Member's Benefit is transferred to another Benefit Arrangement.

8.3 Special arrangements

- (a) The Trustee may agree with a person who is a Member or other Participant or potential Member or other Participant or with the person responsible for or administering another Benefit Arrangement that the participation of the person (each a "**Relevant Person**") in the Fund is subject to, or is varied in accordance with, the conditions contained in the agreement (which may include a Participation Schedule), including the amount of contributions to be made or the benefits to be paid in respect of the Relevant Person or the rights in respect of such benefits that the Relevant Person has in the Fund. The provisions of such an agreement are binding on all interested persons without the need to amend this Deed. To the extent that a provision of such an agreement conflicts with any other provision of this Deed, the provision of the agreement prevails.
- (b) Without limiting the generality of clause 8.3(a), the Trustee may agree to accept an application by an Employer to participate in the Fund pursuant to which some or all of the benefits of the Employees of that Employer are to become payable and are to be calculated and ascertained in accordance with the provisions of the application (such as a vesting scale) instead of wholly by reference to this Deed.

⁷ The wording of this paragraph is adopted in the form it was executed in the Amending Deed dated 20/09/01. This should be corrected when the Deed is next amended to read: "...then the Participating Employer shall cease to be a *Participating Employer* on and from the occurrence of that specified future date."

- (c) If the Trustee agrees to accept an application pursuant to clause 8.3(b) then, provided the benefit payable to the Member is not less than the minimum benefit that is required to be paid to the Member under the Relevant Law:
- (1) the benefits of the Employees of that Employer which are referred to in the application become payable and must be calculated in accordance with the provisions of the application provided that the assets the Trustee determines to allocate to those benefits are sufficient to meet the liabilities in respect of those benefits or additional contributions are made to fund any shortfall;
 - (2) unless the application provides otherwise, any benefits of the Employees of the Employer which are provided for by this Deed but which are not referred to in the application, continue to become payable and be calculated in accordance with this Deed;
 - (3) the Trustee may apply any benefits to which an Employee of an Employer does not become entitled by virtue of the operation of this clause 8.3 against any contributions otherwise payable by the Employer in respect of any Member of the Fund, and any amount so applied is taken to be a contribution by the Employer; and
 - (4) the Trustee may at any time after accepting an application alter the provisions of the application to comply with the Relevant Law.

8.4 Provision of information

- (a) Each Member and other Participant must provide all information and evidence, sign all documents, undergo all medical examinations and tests (in the case of a Beneficiary), and generally satisfy all standards and requirements requested by the Trustee.
- (b) The Trustee may refuse to admit a person as a Member or place conditions on the person's membership if:
 - (1) the person does not comply with clause 8.4(a) to the satisfaction of the Trustee; or
 - (2) information provided by the person is incorrect or contains an omission.
- (c) Each Member and other Participant may inspect a copy of the Deed by making an appointment with the Insurer. The Trustee must otherwise provide information to Members and other Participants as required by the Relevant Law.
- (d) The Trustee can provide information to an Employee Member by providing that information to the Member's Employer.
- (e) The Trustee must treat all information relating to Members and other Participants as confidential and only use that information for the purposes of the Fund or as required by law.

9. CONTRIBUTIONS

9.1 Amount, manner and timing

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

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

9.2 **Application of contributions**

Contributions must be applied towards a policy issued by the Insurer pursuant to which the relevant Member is a life insured, subject to clause 6.1(a). Such policy may permit the Insurer to deduct directly from the policy, fees and charges which relate to the Member or the Fund.

9.3 **Refusal to Accept Contributions**

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

- (a) the person making the contribution is not permitted to do so by the Relevant Law;
- (b) acceptance of the contribution is otherwise contrary to the requirements of the Relevant Law; or
- (c) the Trustee is directed not to accept the contribution by the Regulator; or
- (d) the Member in respect of which the contribution has been received has not quoted their Tax file number.

Nothing in this clause limits the Trustee's discretion to otherwise refuse to accept any contribution made by or on behalf of a Member including where the Trustee becomes aware that a Member has exceeded their non-concessional contributions cap.

9.4 **Refund of Contributions**

The Trustee:

- (a) must repay contributions to or for the benefit of the relevant Member or other Participant:
 - (1) where such contributions have been received contrary to the Relevant Law;
 - (2) where the Member or other Participant requests a refund of the initial contributions or purchase price, in the case of a pension, within 14 days (or such other date required by the Relevant Law) of the relevant Member being admitted to participate in the Fund and where the Relevant Law requires such a repayment; or
- (b) subject to the Relevant Law, may repay contributions to or for the benefit of the relevant Member or other Participant if the contributions have been made erroneously;

in all instances less any adjustment permitted under the Relevant Law for Tax, Net Earnings or Fund Expenses.

9.5 **Reduction in Contributions**

A Member or other Participant may cease, reduce or suspend contributions by written notice to the Trustee or in such other manner approved in general or particular by the Trustee.

9.6 Non-payment of contributions

If contributions paid in respect of a Member are not sufficient to pay for any insurance effected in respect of the Member:

- (a) in relation to insurance effected pursuant to an individual policy relating solely to that Member, the Trustee may cancel or, agree to the cancellation of such policy; or
- (b) in any other circumstances, the Trustee may debit any Account held in respect of that Member in order to pay the outstanding premiums.

9.7 Reasons for Refusal of Contributions

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

9.8 Payment to, and by, Insurer, Manager etc.

- (a) Any payment of contributions directly to an Insurer, custodian or an administration or investment manager appointed under clause 5.3 is deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the Insurer, custodian or administration or investment manager, as the case may be.
- (b) Any payment of benefits payable from the Fund by an Insurer, custodian or an administration or investment manager appointed under clause 5.3 directly to a Beneficiary is deemed to be a payment of benefits by the Insurer, custodian or administration or investment manager, as the case may be, to the Trustee and a payment by the Trustee to the Beneficiary.
- (c) Any payment of contributions payable by an Employee Member may be deducted from the Member's earnings and paid by the Employer to the Trustee and the Member is deemed to have directed the Employer to make such deductions.

9.9 Enforcement of Contribution Payment

The Trustee is not in any circumstances obliged or liable to monitor or enforce the payment of contributions by a Member or other Participant provided that the Trustee may impose interest at a rate it determines on any contribution not paid by a Participating Employer when due.

10. BENEFITS

10.1 Payment of benefits

- (a) Details of benefits payable from the Fund:
 - (1) are as set out under the Rules; or
 - (2) otherwise are as determined by the Trustee in its absolute discretion.
- (b) Where a policy is effected in respect of a Beneficiary or Beneficiaries, the Insured Benefit payable from the Fund to the Beneficiary or Beneficiaries must be determined in accordance with the terms and conditions of that policy and cannot exceed the Insured Benefit paid to the Trustee by the Insurer in respect of the relevant Beneficiary.
- (c) The Trustee is not required to pay a benefit unless the person claiming the benefit:

- (1) makes proper application to the Trustee in the form required by the Trustee;
 - (2) provides information to the Trustee as requested by it to substantiate such claim and benefit; and
 - (3) gives instructions in relation to the method of payment of the benefit which are acceptable to the Trustee.
- (d) A benefit of a Beneficiary is calculated as at the date the event which gave rise to the entitlement of the Beneficiary occurred and may include Net Earnings on the benefit up to the date of payment if the Trustee so determines.
- (e) The Trustee may pay all or part of a benefit by:
- (1) the transfer of an asset or assets; and/or
 - (2) paying the amount by cheque and by sending that cheque or delivering that cheque in any manner contemplated for the sending of notices under clause 13.1.
- (f) The Trustee may make any benefit payment conditional and repayable should the Trustee's decision to make that payment be varied, substituted or otherwise overturned by a court or tribunal.
- (g) Where permitted by the Relevant Law, the Trustee may pay a benefit of a Beneficiary who, in the Trustee's opinion, is not capable of receiving that benefit or managing his or her affairs, to any other person for the benefit of the Beneficiary, without being responsible for the application of the benefit by the person to whom it is paid.
- (h) If a Beneficiary entitled to a benefit requests the Trustee to apply it by way of the purchase of an annuity or transfer to another Benefit Arrangement, unless the benefit is to be dealt with under another provision of this Deed, the Trustee must comply with request.
- (i) Any amount held in the Fund which is not allocated to any Beneficiary or to any Account or which may not or cannot be paid or which is not payable by the Trustee to any Beneficiary may be dealt with as the Trustee determines for any purpose determined by the Trustee which is permissible under the Relevant Law including reduction of contributions of a Member or other Participant or to meet Fund Expenses.
- (j) Subject to the Relevant Law, the Trustee may pay out a Member's Benefit if the value of the Benefit falls below a minimum amount determined by the Trustee from time to time.

10.2 Charging benefits

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

10.3 Adjustment of benefits

The Trustee may adjust benefits and rights of a Beneficiary, subject always to the Relevant Law, to take account of:

- (a) any contributions which have not been paid;

- (b) any Tax or Fund Expense;
- (c) any incorrect, inaccurate or misleading information supplied, or lack of information supplied, in respect of a Beneficiary;
- (d) any amount owed by the Beneficiary to the Trustee or to a Participating Employer, including any recovery costs relating to such amount; and
- (e) any action of an Insurer referred to in clause 6.3(g).

10.4 Discharge and release

The Trustee is completely discharged in respect of any payment in accordance with this Deed including:

- (a) a payment to or on behalf of a person the Trustee believes in good faith is entitled to the benefit;
- (b) a payment made directly by the Insurer in good faith to or on behalf of a person that the Trustee believes in good faith is entitled to the benefit.

10.5 Payment of death benefits

~~(a) Subject to clause 10.5(b), 10.5(c), 10.5(d) and Schedule 3 of this Deed, the Trustee must pay a Member's death benefits to either or both of the following:~~

- ~~(1) the Member's legal personal representative;~~
- ~~(2) one or more of the Member's Dependants,~~

~~in such proportions as the Trustee, in its absolute discretion, determines. In making its determination, the Trustee may have regard to any preference expressed by the Member.~~

~~(b) Where and to the extent permitted by the Relevant Law, the Trustee may:~~

- ~~(1) determine that any or all Members are given the facility to direct the Trustee to pay all or any part of the Member's death benefits to a person or persons referred to in clause 10.5(a) as are specified in the direction; or~~
- ~~(2) allow a Member to nominate a person or persons referred to in clause 10.5(a) to receive a death benefit, including as a Reversionary Pensioner, and the Trustee may approve such nomination at any time after receiving it including on or after the death of the Member,~~

~~and in such a case the Trustee must pay the benefit to the relevant person or persons where:~~

- ~~(3) the direction referred to clause 10.5(b)(1) is given; or~~
- ~~(4) the Trustee approves a nomination pursuant to clause 10.5(b)(2).~~

~~(c) Subject to the clause 10.5(b), the Trustee may agree to pay a Member's death benefits in accordance with the governing rules of the Benefit Arrangement from which the Member transferred (including any rules relating to nominations of beneficiaries).~~

- ~~(d) The Trustee may pay a Member's death benefits to any other person where permitted by this Deed and the Relevant Law.~~
- ~~(e) The Trustee may formulate and implement rules governing the payment of a Member's death benefit in circumstances where a direction given by a Member pursuant to clause 10.5(b)(1):~~
- ~~(1) is incomplete;~~
 - ~~(2) is illegible;~~
 - ~~(3) specifies persons who are not capable of being paid a death benefit under Relevant Law;~~
 - ~~(4) specifies persons who have predeceased the Member or whose status as a Spouse or a Dependant of the Member has changed; or~~
 - ~~(5) is otherwise incapable of being implemented for whatever reason.~~
- (a) The provisions of the rest of this clause 10.5 are subject to the provisions of Schedule 3 of this Deed insofar as the provisions of Schedule 3 concern Reversionary Pensioners.
- (b) A Member may give the Trustee a Binding Death Benefit Nomination. A Binding Death Benefit Nomination must:
- (i) identify one or more of the Member's Dependants and Legal Personal Representative as the beneficiaries of the Member's death benefit;
 - (ii) identify the proportions in which the death benefit is to be allocated between the nominated beneficiaries, if more than one;
 - (iii) be signed and dated by the Member;
 - (iv) be witnessed by 2 people who are age 18 or over and who are not nominated beneficiaries; and
 - (v) comply with any form and content requirements of the Trustee.
- (c) If a Member with a valid Binding Death Benefit Nomination dies, the Trustee must pay the Member's death benefit to the Member's Nominated Beneficiaries in the proportions specified in the nomination. A Binding Death Benefit Nomination is valid if it:
- (i) was made, or confirmed in accordance with any form and content requirements of the Trustee, within 3 years of the Member's death; and
 - (ii) was not revoked by the Member in accordance with any form and content requirements of the Trustee.
- (d) If a Member did not have a valid Binding Death Benefit Nomination at death, or if the Trustee cannot pay the Member's death benefit, in whole or part, because one or more of the Nominated Beneficiaries are neither the Member's Dependant nor Legal Personal Representative, the Trustee must pay the death

benefit, or that part of the death benefit that cannot be paid in accordance with the Binding Death Benefit Nomination, to the Member's Legal Personal Representative, unless:

- (i) the Trustee has not identified the Member's Legal Personal Representative, or a person who has filed an application in court for a grant of probate or letters of administration, in each case within 6 months of the Trustee being notified of the Member's death; or
- (ii) the Trustee is notified, by a person that the Trustee considers is reasonably qualified to form the view, that the Member's estate is insolvent because the estate's assets (excluding, for this purpose, the death benefit payable from the Fund) will be exhausted in meeting the estate's liabilities,

however, subject to paragraph (ii), the Trustee may pay a death benefit to an executor named in a deceased Member's will without a grant of probate where the death benefit is less than the Probate Limit.

- (e) If a death benefit is not payable under clause 10.5(c) or 10.5(d), the Trustee must pay the death benefit to:
 - (i) the Member's Spouse at the date of death or, if the Member had more than one Spouse at the date of death, to them in equal shares; and
 - (ii) if the benefit is not paid under paragraph (i), the Member's Child (including an unborn child) at the date of death, or if the Member had more than one Child (including an unborn child) at the date of death, to them in equal shares,

however, a person is only a 'Spouse' or a 'Child' for the purposes of paragraphs (i) and (ii) respectively if the Trustee is aware of the person's existence and is otherwise reasonably satisfied of their status as such.

- (f) If a death benefit is not payable under clause 10.5(c), 10.5(d) or 10.5(e), the Trustee must:
 - (i) even if the Member's estate is insolvent, pay the death benefit to the Member's Legal Personal Representative; and
 - (ii) if the benefit is not paid under paragraph (i), deal with it in accordance with applicable unclaimed money legislation.

- (g) In applying the provisions of clause 10.5(e) in relation to a deceased Member, the Trustee must take reasonable steps to obtain:
 - (i) a death certificate for the Member;
 - (ii) the Member's will (if there is one);
 - (iii) from the person who notifies the Trustee of the Member's death and, if different, the executor named in the will (if obtained), a statutory declaration which:

- (A) confirms that, at the Member's death, the Member had no Spouses or Children other than those identified in the death certificate or the will (if obtained); or
- (B) identifies, and provides contact details for, anyone else who the declarant knows was a Spouse or Child of the Member, at the Member's death.

The Trustee is not required to take any other step concerning the identification of the Member's Dependants for the purposes of clause 10.5(e) unless it is necessary to do so in order to ensure compliance with the Relevant Law'.⁸

10.6 Payments under Relevant Law

The Trustee:

- (a) may (but is not obliged to) pay a benefit where the payment of that benefit is permitted by the Relevant Law; and
- (b) must pay a benefit where the payment of that benefit is required by the Relevant Law.

10.7 Recoupment of Tax and Overpaid Amount

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

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

10.8 Forfeiture of Benefits

A benefit of a Member will be forfeited if he or she assigns, alienates or charges his or her benefit or purports to do so.

10.9 Unclaimed Money

The Trustee must deal with unclaimed money in accordance with the Relevant Law.

11. TRANSFERS

⁸The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

11.1 Transfers

- (a) The Trustee may:
- (1) make arrangements for the transfer into the Fund of cash or property with:
 - (A) the person responsible for or administering a Benefit Arrangement; or
 - (B) a person who is or was a participant in a Benefit Arrangement;on conditions agreed between the Trustee and the other person, including on terms which differ from the terms of participation otherwise provided for under this Deed; and
 - (2) transfer cash or property from a Benefit Arrangement to the Fund.
- (b) The Trustee:
- (1) may with the consent of a Beneficiary, transfer all or part of the benefits of the Beneficiary to a Benefit Arrangement; and
 - (2) must transfer to a Benefit Arrangement requested by a Member all or part of the benefit of a Member which is then payable to the Member; and
 - (3) if the Relevant Law permits, without the consent of the Beneficiary, deal with all or part of the benefits of a Beneficiary:
 - (A) by transferring them to a Benefit Arrangement; or
 - (B) by crediting them to new Accounts maintained for the Beneficiary in the Fund, or in another Plan to which the Beneficiary has been admitted.
- (c) Notwithstanding clauses 11.1(1)(a) and (b) but subject to the Relevant Law, the Trustee must not transfer an Employee Member from the Fund without the consent of that person's Participating Employer.
- (d) The Trustee may provide such indemnities and undertakings and accept such liabilities (each an "**Obligation**") in relation to the transfer of cash and property to and from the Fund as it determines in its absolute discretion (including providing an indemnity and undertaking to, and accepting the liability of, the person responsible for or administering another Benefit Arrangement from which the benefits of a Beneficiary are transferred). Where the Trustee has assumed an Obligation, the Trustee may debit the Accounts of the Members to which the cash and property relates and such other Accounts and on such basis as the Trustee, in its absolute discretion, determines in respect of the Obligation.

11.2 Transfers under the Relevant Law

The Trustee may, and if required by the Relevant Law must, transfer benefits of Beneficiaries to a Benefit Arrangement or to the Regulator in the circumstances contemplated by the Relevant Law.

11.3 Transfers between Plans, Sections, Divisions or Categories

The Trustee may:

- (a) permit a Beneficiary in one Plan, Section, Division or Category to transfer to another Plan, Section, Division or Category subject to any conditions it determines appropriate; or
- (b) transfer a Beneficiary in one Plan, Section, Division or Category to another Plan, Section, Division or Category if it considers that it is appropriate to transfer such Beneficiary to the other Plan, Section, Division or Category.

11.4 Preserved Benefits

A Preserved Benefit may only be transferred to another Benefit Arrangement on the following conditions:

- (a) that the Preserved Benefit and any accretions to it will continue to be treated as a Preserved Benefit in the other Benefit Arrangement; and
- (b) that the Preserved Benefit will not be transferred from the other Benefit Arrangement except on these terms and conditions.

11.5 Discharge of Trustee's Liability

Upon the transfer of an amount pursuant to this Part 11, the Trustee is:

- (1) completely discharged from any liability to the Beneficiary or any person claiming through the Beneficiary in respect of the amount transferred, and
- (2) not responsible for the manner in which the other Benefit Arrangement deals with the amount transferred.

12. TERMINATION OF FUND

12.1 Termination of Fund or Plan

- (a) The Trustee with the consent of the Sponsoring Party may terminate the Fund, a Plan, Category, Division or Section in its absolute discretion.
- (b) The Fund or a Plan must be terminated if the Relevant Law requires.
- (c) Upon termination, all arrears of contributions must be paid immediately.

12.2 Application of Fund or Plan

The net proceeds of the Fund, a Plan, Category, Division or Section after meeting Fund Expenses must be applied to or towards the payment of Beneficiaries' benefits in accordance with this Deed. Such payment is accepted by the Beneficiary in full discharge of all claims in respect of the Fund. The Trustee may deal with any remaining money or property in the Fund, a Plan, Category, Division or Section for any purpose determined by the Trustee which is permissible under the Relevant Law.

13. GENERAL

13.1 Notices

Subject to clause 13.2, any communication in connection with the Fund:

- (a) must be either in writing or if given orally must conform to instructions given by the Trustee;
- (b) may be given to a Beneficiary:
 - (1) at his or her place of employment;
 - (2) at such other address last notified to the Trustee by the Member or other Participant or other Beneficiary; or
 - (3) at the option of the Trustee, to the Beneficiary's Participating Employer or to that Participating Employer's last known address on behalf of the Beneficiary;

and is deemed to be received by the Beneficiary on the earlier of:

- (4) 3 business days after the notice is sent by mail; and
- (5) the day the notice is received at the above address; and
- (c) must be given to the Trustee at its registered office and is effective only when received by the Trustee at that office.

13.2 Electronic Means

Where and to the extent permitted by the Relevant Law, the Trustee may:

- (a) allow a notice to be sent to the Trustee by electronic means; or
- (b) send a notice by electronic means.

13.3 Authorisations

- (a) The Trustee may treat a written or oral authorisation given or purported to be given by:
 - (1) a director of the Employer, as a valid authorisation by the Employer; or
 - (2) a Member, as a valid authorisation by the Member.

13.4 Not affecting other Rights

- (a) Nothing in this Deed:
 - (1) in any way restricts the rights of an Employer to terminate the employment of a Member or to promote or demote an Employee; or
 - (2) may be used in any proceedings against an Employer relating to a termination of employment.
- (b) Being a Member must not be taken as a guarantee of continuation of employment.

13.5 **Work Related Claims**

The benefits payable to a Member must not be used as a ground for increasing damages in any action brought by the Member against an Employer in respect of the termination of the Member's employment.

13.6 **National Compensation**

(a) A Participating Employer may direct the Trustee to make any changes to contributions or benefits if the Participating Employer is required by law to make payments to, or provisions for:

- (1) any scheme of national or social security for the benefit of Employees; or
- (2) any superannuation scheme (including the Fund); or
- (3) any scheme of compensation to provide a continuation of part or all of the earnings of Employees on disablement from accident, injury, illness or the like.

This power is in addition to the Participating Employer's other rights and powers.

(b) No change may be made under clause 13.6(a).

- (1) contrary to any statute or Award; or
- (2) reducing a benefit that has accrued or become payable for a Member, without the written consent of the Member or the Regulator.

(c) The Trustee must notify the Member and the Participating Employer of the effect of any change made under this clause.

13.7 **Common Law Rights of Members**

(a) Nothing in this Deed in any way affects the right of a Member, a Member's legal personal representative or any other person to claim damages or compensation at common law or under any legislation governing compensation in the event of the Member being injured or dying from any accident arising out of, or in the course of, the Member's employment.

(b) Any amount payable under this Deed (other than an Insured Benefit in respect of a Member) must not be reduced by reason of any payment that may be made in respect of such damages or compensation.

SCHEDULE 1

Rules

[Redundant provisions for the Masterfund Employee Division deleted 23 May 2012]

SCHEDULE 2

Rules

2.1 Name of Division: Masterfund Gainfully Employed Persons' Division

2.2 Definitions: In this Schedule:

“**Member**” means a person admitted by the Trustee to participate in this Division under Rule 2.3.

“**Normal Retirement Age**” means:

- (a) 65 years of age; or
- (b) such other age (being not less than 55 years of age) as the Trustee and the Member agree upon, as being the Normal Retirement Age of the Member.

2.3 Participants:

Any person may be admitted to participate in this Division under clause 8.1(ea) subject to the approval of, and the conditions imposed by, the Trustee.

2.4 Contributions

- (a) **Member contributions:** A Member may contribute to the Division such amounts as are specified in the Member's application or as are otherwise agreed between the Trustee and the Member.
- (b) **Employer contributions and eligible spouse contributions :** The Member's Employer, and any other person authorised by the Relevant Law, may contribute to the Division such amounts in respect of the Member as the Employer or the person determines, in such manner, as is approved by the Trustee.
- (c) **Member contributions paid by Employer:** An Employer may pay, on behalf of a Member, contributions that would otherwise be payable by the Member. Any contributions so paid by the Employer, and identified as such, are deemed to be contributions made by the Member.
- (d) **Identification of contributions:** The Employer and/or the Member must identify contributions and other amounts when required by the Trustee.
- (e) **Transfers from Division 3:** The Trustee may accept in respect of a Beneficiary part or all of a Member's Benefit transferred from the Masterfund Pension Division to this Division, representing the commutation of part or all of a pension payable under that Division.

2.5 Benefits

- (a) **Normal and late retirement of Personal Member:** A Personal Member is entitled to the Member's Benefit upon:
 - (1) retirement from employment on or after the Member's Normal Retirement Age;

- (2) ceasing employment on or after attaining age 60; or
- (3) attaining age 65.

The Trustee must pay a Personal Member the Member's Benefit if after attaining age 65 the Member requests payment of such benefit.

- (b) **Member to inform Trustee:** The Member must inform the Trustee as soon as practicable after the Member ceases to be employed on a Part-Time Basis after attaining age 65.
- (c) **Mode of payment of benefit:** A benefit payable under Rule 2.5(a) must be paid:
 - (1) in a lump sum;
 - (2) if the Member so elects and the Trustee approves and transfers part or all of the Member's Benefit to the Masterfund Pension Division, by way of a pension or annuity that complies with the requirements of the Relevant Law and is paid in accordance with Schedule 3; or
 - (3) as a combination of the above.
- (d) [not used].
- (e) **Annuities:** The Trustee may provide a pension payable under Rule 2.5(c) by applying a Member's Benefit to purchase in the name of either the Trustee or the Member an annuity that meets the requirements of the Relevant Law for the Trustee to obtain the maximum income tax concessions for the Fund.
- (f) **Termination of employment of Personal Member before retirement:** Subject to Rule 2.5(k), a Personal Member is entitled to the Member's Benefit on ceasing employment with his or her Employer before the Member's Normal Retirement Age.
- (g) **Total and Permanent Disablement:** A Member is entitled to the Member's Benefit on Total and Permanent Disablement. The Trustee may pay the Member's Benefit in such instalments and on such other conditions as it determines. If the Trustee is satisfied that the Member is unable to manage his or her own affairs, the Trustee may pay the benefit in accordance with clause 10.5 as if it were a death benefit.
- (h) **Death:** On the death of a Member before retirement, a death benefit equal to the Member's Benefit is payable according to clause 10.5.
- (i) **Death after retirement:** On the death of a Personal Member:
 - (1) on or after attaining the Member's Normal Retirement Age; or
 - (2) after retirement from employment or self employment (as the case may be),a death benefit equal to the Member's Benefit is payable according to clause 10.5.
- (j) [not used].
- (k) **Preservation:** A benefit of a Beneficiary:

- (1) which is payable under Rule 2.5(f) (but which is not a Preserved Benefit) may be kept in the Fund provided that it must be paid from the Fund when required by the Relevant Law;
 - (2) which is a Preserved Benefit:
 - (A) must, notwithstanding that the Preserved Benefit is less than \$200 at the time of the termination of the Member's employment, be retained in the Fund until the benefit ceases to be a Preserved Benefit and may be paid under this Deed or is required to be paid under the Relevant Law;
 - (B) may, on the request of the Member, be transferred to another Benefit Arrangement in accordance with clause 11.1; and
 - (C) may, on the request of the Member, be applied to purchase a deferred annuity to be held by the Trustee until the Member attains age 55, and:
 - (1) under which the first annuity payment is not be made until on or after the Member attains age 55 and has retired from the workforce provided that the annuity instalments must commence to be paid no later than the attainment by the Member of the age of 65 years or in such other circumstances as are permitted by the Relevant Law;
 - (2) which cannot be surrendered or assigned until the Member attains age 55; and
 - (3) which cannot be mortgaged or encumbered in any manner whatsoever;
 - (3) must be transferred to another Benefit Arrangement if required by the Relevant Law.
- (1) **Temporary Disablement:** If the Trustee has effected a policy covering temporary disablement in respect of a Member, the Trustee must pay the Member the proceeds of that policy which relate to the Member.
 - (m) **Severe financial hardship:** Where a Member is taken to be in severe financial hardship for the purposes of the Relevant Law, the Trustee must pay to that Member an amount determined by the Trustee in accordance with the Relevant Law, not exceeding the amount of the Member's Benefit.
 - (n) **Compassionate grounds:** Where the Regulator has made a written determination that a Member has satisfied a condition of release on compassionate grounds, the Trustee must pay to that Member a single lump sum amount determined in writing by the Regulator, not exceeding the amount of the Member's Benefit.
 - (o) **Other circumstances:** Notwithstanding any other provision of this Rule 2.5, a benefit of a Beneficiary which is payable pursuant to the Relevant Law must be paid upon request of the Member and may be paid in the discretion of the Trustee in such other circumstances permitted by the Relevant Law.

SCHEDULE 3

Rules

3.1 Name of Division: Masterfund Pension Division

3.1A Subdivisions

This Division is subdivided into the following three subdivisions:

- (a) the Allocated Pension Subdivision; and
- (b) the Term Allocated Pension Subdivision; and
- (c) the Account Based Pension Subdivision.

3.2 Definitions: In this Schedule:

“**Member**” means a person admitted by the Trustee to participate in this Division under Rule 3.3.

“**Unrestricted Non-Preserved Benefit**” has the meaning given to it by SIS.

3.3 Participants

Any person to whom the Trustee may pay a pension without breaching the Relevant Law may be admitted to participate in this Division as a Member under clause 8.1(ea) subject to the approval of, and the conditions imposed by, the Trustee.

3.4 Acceptance of rollovers and transfers

- (a) The Trustee may accept in respect of a Member:
 - (1) the rollover of an Unrestricted Non-Preserved Benefit;
 - (2) the transfer of an Unrestricted Non-Preserved Benefit from another Benefit Arrangement;
 - (3) contributions made by or in respect of the Member; and
 - (4) part or all of a Member’s Benefit transferred from the Masterfund Gainfully Employed Persons Division to this Division pursuant to Rule 2.5(c) of Schedule 2 of this Deed.
- (b) The Trustee may establish rules governing the acceptance of amounts under Rule 3.4(a) including, but not limited to, the minimum amount that may be accepted.

3.5 Type of Pension

The Trustee may agree with a Member to provide one or more of:

- (a) an allocated pension;
- (b) a term allocated pension;

- (c) a term pension; or
- (d) a lifetime pension; or
- (e) an Account Based Pension

3.6 Selection of Pension

- (a) If an allocated pension is agreed to be paid under rule 3.5(a) the Trustee must pay an allocated pension on the terms and conditions specified in rule 3.7.
- (b) If a term allocated pension is agreed to be paid under rule 3.5(b) the Trustee must pay a term allocated pension on the terms and conditions specified in rule 3.8.
- (c) If a pension is agreed to be paid under rule 3.5(c) or 3.5(d), the Trustee must pay the pension on the terms and conditions agreed between the Trustee and Member.
- (d) The Trustee may provide the pension (including an allocated pension and a term allocated pension) by purchasing an annuity in its own name or in the name of the Member.
- (e) If an Account Based Pension is agreed to be paid under rule 3.5(e) the Trustee must pay the Account Based Pension on the terms specified in rule 3.9.

3.7 Allocated Pension

- (a) The Trustee may pay each Member a pension:
 - (1) commencing on the date specified in the Member's application which must be not later than necessary to comply with the Relevant Law; and
 - (2) terminating when the Member's Benefit is zero.
- (b) The Trustee must pay the pension to a Member at the times set out in the Member's application as approved by the Trustee.
- (c) A Member may change the frequency of the pension payments if:
 - (1) the change is approved by the Trustee; and
 - (2) is in a form approved by the Trustee.
- (d) If at any time a Member has not made a selection as to the frequency of the pension payments, the Trustee must pay the pension annually.
- (e) For so long as the pension is payable, the Trustee must ensure that at least one payment is made during each Financial Year.
- (f) For each Financial Year (or part of a financial year), the pension payments to a Member must not be:
 - (1) larger than the maximum limits; nor
 - (2) smaller than the minimum limits,

set out in the Relevant Law for allocated pension benefits;

- (g) As at the time a Member becomes a Member of this Division and each 1 July, the Trustee must notify the Member of the minimum and maximum levels for pension payments for the Financial Year in which that date occurs.
- (h) At any time during a Financial Year, a Member may select the level of pension payments for that Financial Year within the limits in rule 3.6(f). The selection must be in a manner approved by the Trustee.
- (i) If at any time during a Financial Year no selection has been made for that year under rule 3.7(h) and a pension was being paid in the previous Financial Year, the Trustee must either:
 - (1) pay a pension for the current year calculated according to any previous agreement between the Trustee and Member; or
 - (2) if the Member's application does not contain a stipulation for the current year, continue to pay a pension at the level prevailing at the end of the previous Financial Year.

However, the Trustee may adjust the level up to the minimum or down to the maximum so as to comply with rule 3.7(f).

- (j) If, at the time of joining this Division, a Member has not made a selection under rule 3.7(h), the Trustee must pay a pension at the minimum level required under rule 3.7(f).
- (k) If permitted by the Relevant Law, a Member may commute the whole or a part of the Member's pension at any time by notifying the Trustee in a manner approved by the Trustee.
- (l) On a Member fully commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal in amount to the Member's Benefit.
- (m) On a Member partially commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the amount requested but not exceeding the Member's Benefit.
- (n) If the Relevant Law requires the Trustee to commute part of a Member's pension, the Trustee must comply with that requirement.
- (o) The capital value of the pension and the income from it must not be used as security for a borrowing unless permitted by the Relevant Law.
- (p) The pension must not be transferred to another person unless permitted by the Relevant Law.
- (q) If a Member dies while still entitled to a pension, the Trustee must:
 - (1) subject to the Relevant Law, pay the residue of the Member's Benefit being paid as a pension to the Member's Reversionary Pensioner (if any); or
 - (2) in all other cases, pay the residue of the Member's Benefit being paid as a pension as a death benefit under clause 10.5 ~~(other than clause 10.5(b)(2) and~~

~~(4)), which may include paying it as a continuing pension to a reversionary beneficiary, being any one or more of the Member's eligible Dependants, as determined by the Trustee under clause 10.5.~~

- (r) [not used].
- (s) If a Reversionary Pensioner dies while still entitled to a pension, the Trustee must pay the benefit ~~as a lump sum to the Reversionary Pensioner's Legal Personal Representative~~ in accordance with clauses 10.5(d) - 10.5(f) as if the Reversionary Pensioner were a Member.
- ~~(t) If, after making all reasonable enquiries for the purposes of Rule 3.7(s), the Trustee is unable to locate the Reversionary Pensioner's Legal Personal Representative, the Trustee must pay the benefit as a lump sum to one or more of the Reversionary Pensioner's Dependants in such proportions as the Trustee in its absolute discretion determines.~~
- ~~(u) If, after making all reasonable enquiries for the purposes of Rule 3.7(t), the Trustee is not able to locate any Dependants of the Reversionary Pensioner, the Trustee may, in its absolute discretion, pay the benefit to any other person as is permitted by Relevant Law.⁹~~
- (v) As an alternative to paying an allocated pension on the basis of the above rules from 1 July 2007 a Member may elect to have the pension paid on the terms stipulated in rule 3.9.
- (w) Where the Relevant Law requires additional or differing conditions to those stipulated in this rule 3.7 for the payment of allocated pensions these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.

3.8 Term Allocated Pension

- (a) The Trustee may pay each Member a pension:
 - (1) commencing on the date specified in the Member's application which must be not later than necessary to comply with the Relevant Law; and
 - (2) terminating on the earlier of:
 - (A) when the Member's Benefit is zero; and
 - (B) the date the pension is required to terminate in order to comply with the Relevant Law.
- (b) The Trustee must pay the pension to a Member at the times set out in the Member's application as approved by the Trustee.
- (c) A Member may change the frequency of the pension payments if the change is:
 - (1) approved by the Trustee; and

⁹ The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

- (2) in a form approved by the Trustee.
- (d) If at any time a Member has not made a selection as to the frequency of the pension payments, the Trustee must pay the pension annually.
- (e) For so long as the pension is payable, the Trustee must ensure that at least one payment is made during each Financial Year.
- (f) For each Financial Year (or part of a Financial Year), the amount of pension payments to a Member must be calculated in accordance with Relevant Law.
- (g) As at the time a Member becomes a Member of this Division and each July, the Trustee must notify the Member of the amount of the pension payments to be paid to the Member for the following Financial Year.
- (h) If permitted by the Relevant Law, a Member may commute the whole or a part of the Member's pension at any time by notifying the Trustee in a manner approved by the Trustee.
- (i) On a Member fully commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal in amount to the Member's Benefit.
- (j) On a Member partially commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the amount requested but not exceeding the Member's Benefit.
- (k) If the Relevant Law requires the Trustee to commute part of a Member's pension, the Trustee must comply with that requirement.
- (l) The capital value of the pension and the income from it must not be used as security for a borrowing unless permitted by the Relevant Law.
- (m) The pension must not be transferred to another person unless permitted by the Relevant Law.
- (n) If a Member dies while still entitled to a pension, the Trustee must:
- (1) subject to the Relevant Law, pay the residue of the Member's Benefit being paid as a pension to the Member's Reversionary Pensioner (if any); or
 - (2) in all other cases, pay the residue of the Member's Benefit being paid as a pension as a death benefit under clause 10.5 ~~(other than clause 10.5(b)(2) and (4)), which may include paying it as a continuing pension to a reversionary beneficiary, being any one or more of the Member's eligible Dependants, as determined by the Trustee under clause 10.5.~~
- (o) [not used].
- (p) If a Reversionary Pensioner dies while still entitled to a pension, the Trustee must pay the benefit ~~as a lump sum to the Reversionary Pensioner's Legal Personal Representative~~ in accordance with clauses 10.5(d) - 10.5(f) as if the Reversionary Pensioner were a Member.
- ~~(q) If, after making all reasonable enquiries for the purposes of rule 3.8(p), the Trustee is unable to locate the Reversionary Pensioner's Legal Personal Representative, the~~

~~Trustee must pay the benefit as a lump sum to one or more of the Reversionary Pensioner's Dependants in such proportions as the Trustee in its absolute discretion determines.~~

- ~~(r) — If, after making all reasonable enquiries for the purposes of rule 3.8(q), the Trustee is not able to locate any Dependants of the Reversionary Pensioner, the Trustee may, in its absolute discretion, pay the benefit to any other person as is permitted by Relevant Law.¹⁰~~
- (s) Where the Relevant Law requires additional or differing conditions to those stipulated in this rule 3.8 for the payment of term allocated pensions these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.

3.9 Account Based Pension

- (a) Where an Account Based Pension is payable from the Fund the following conditions shall apply to the payment of the pension to a Member:
- (1) At least one pension payment must be made during each Financial Year, and the total of all pension payments in any year must be at least the amount required by the Relevant Law; and
 - (2) The pension is transferable only to another person on the death of the Member; and
 - (3) The capital value of the pension and the income from it cannot be used as security for a borrowing; and
 - (4) Upon the death of the Member the pension must not continue to be paid as a pension to:
 - (A) An adult Child at least 25 years of age (unless they have a disability of the kind described in subsection 8(1) of the Disability Services Act 1986 Cth); or
 - (B) A Child between the ages of 18 and 24 who was not financially dependent on the Member; or
 - (C) The legal personal representative of the estate of the Member; and
 - (5) The pension cannot be commuted in whole or in part except in the following circumstances:
 - (A) Where a Member or Reversionary Pensioner has died; or
 - (B) Where the sole purpose of the Communication is to:
 - (i) pay a superannuation contributions surcharge; or

¹⁰The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

- (ii) give effect to an entitlement of a non-member spouse under a family law payment split; or
 - (iii) meet the rights of a person to return a financial product under the Relevant Law; or
- (C) Where there is a partial commutation the account balance of the pension after the commutation is equal to or greater than the minimum balance required by the Relevant Law after the commutation; or
- (D) The minimum amount required to be paid under the Relevant Law has been paid in the financial year in which the commutation takes place; and
- (6) No minimum payment of the pension shall be required in a Financial Year where that pension commences after 1 June in that Financial Year unless the Relevant Law otherwise requires; and
- (7) No payment by way of contribution or by way of a transfer or rollover shall be added to the pension account.
- (b) Where the Relevant Law requires additional or differing conditions to those stipulated in rule 3.9(a) for the payment of Account Based Pensions these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.
- (c) If a Member dies while still entitled to a pension, the Trustee must:
 - (1) subject to the Relevant Law and Rule 3.9(a)(4), pay the residue of the Member's Benefit being paid as a pension to the Member's Reversionary Pensioner (if any); or
 - (2) in all other cases, pay the residue of the Member's Benefit being paid as a pension as a death benefit under clause 10.5 ~~(other than clause 10.5(b) (2) and (4)), which may include paying it as a continuing pension to a reversionary beneficiary, being any one or more of the Member's eligible Dependants, as determined by the Trustee under clause 10.5.~~
- (d) If a Reversionary Pensioner dies while still entitled to a pension, the Trustee must pay the benefit ~~as a lump sum to the Reversionary Pensioner's Legal Personal Representative~~ in accordance with clauses 10.5(d) - 10.5(f) as if the Reversionary Pensioner were a Member.
- ~~(e) If, after making all reasonable enquiries for the purposes of Rule 3.9(d), the Trustee is unable to locate the Reversionary Pensioner's Legal Personal Representative, the Trustee must pay the benefit as a lump sum to one or more of the Reversionary Pensioner's Dependants in such proportions as the Trustee in its absolute discretion determines.~~
- ~~(f) If, after making all reasonable enquiries for the purposes of Rule 3.9(e), the Trustee is not able to locate any Dependants of the Reversionary Pensioner, the Trustee may, in~~

~~its absolute discretion, pay the benefit to any other person as is permitted by the Relevant Law.~~¹¹

- (g) Where the Relevant Law requires additional or differing conditions to those stipulated in this rule 3.9 for the payment of account based pensions these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.

3.10 Transition to Retirement Income Stream at Preservation Age

- (a) Where a Member attains his or her preservation age but does not retire from gainful employment the Trustee may offer an Account Based Pension on the terms specified in these rules except that the Account Based Pension cannot be commuted to a superannuation lump sum unless:
 - (1) the purpose of the commutation is:
 - (A) to cash an unrestricted non-preserved benefit; or
 - (B) to pay a superannuation contributions surcharge; or
 - (C) to give effect to an entitlement of a non-member spouse under a family law payment spilt; or
 - (2) before the commutation the Member has satisfied a condition of release in respect of which the cashing restriction for Preserved Benefits and restricted non-preserved benefits is nil.
- (b) The total pension payments made in a financial year to a Member for a Transition to Retirement Income Stream may be no more than 10% of either:
 - (1) the pension account balance on 1 July in the financial year in which the payment is made; or
 - (2) if the relevant financial year is the year in which the pension commences the pension account balance on the commencement day; or
 - (3) such other amount as required under the Relevant Law.
- (c) Where the Relevant Law requires additional or differing conditions to those stipulated in rule 3.10(a) and (b) for the payment of a non-commutable form of an Account Based Pension these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.

¹¹ The striking out and addition (where applicable) of words in blue take effect from the date noted on page 1 of this consolidated deed.

ANNEXURE 1

Index of Amendments

Date of Amending Deed	Effect of amendments	Observations
28 June 2001	Replaced the rules of the Fund in their entirety.	Effective 30 June 2001
20 September 2001	Amended clause 8.2(b)(3) relating to participation of Participating Employer, to allow for a Participating Employer to cease to participate at a future time specified in a written notice from the trustee.	Effective 30 June 2001
11 February 2003	Amended various clauses to allow for the Trustee to comply with the amendments to the Family Law Act 1975 relating to splitting of superannuation interests.	
19 March 2004	Amended clause 8.1(a), and rules 1.3(a) and 1.3(b) of Schedule 1 in relation to the types of persons who may participate in the Fund, and rule 3.7(r) in relation to the payment of amounts to reversionary beneficiaries in the Masterfund Pension Division.	
19 August 2004	Amended Schedule 3 Rules to cater for introduction of Term Allocated Pension product.	
13/05/05	Amended clause 1.1 definition of "Dependant" to include persons in Interdependency Relationship.	Effective 12 November 2004
18 July 2007	Amended various clauses to respond to the Simplified Superannuation reforms that took affect on 1 July 2007, and to make various minor corrections to existing provisions.	Effective 1 July 2007
14 January 2009	Effective 1 January 2009: Amended definitions of "Spouse" and "Child" to adopt the changes to these definitions in the Superannuation Industry Supervision Act 1993 made by the Same-Sex Relationships (Equal Treatment in Commonwealth laws - Superannuation) Act 2008.	Effective 1 January 2009. For death benefits, the changes only apply to deaths on or after 1 January 2009 and not to deaths prior.
23 May 2012	Effective 23 May 2012, various amendments delete the redundant Schedule 1; clarify the Trustee's indemnity to reflect the law; clarify that a single Fund membership can relate to more than one Plan, Division, Section or Category; clarify the relationship between trust deed provisions dealing death benefit payments and those with reversionary pensioners; include provisions more closely reflecting the account based pension standards.	More than one Schedule can relate to a person's membership, such that superannuation participation (Schedule 2) can transition to pension participation (Schedule 3) under one Fund membership and vice versa.