

**DEED OF AMENDMENT**

**AMG UNIVERSAL SUPER**

The Trust Company (Superannuation) Limited  
ABN 49 006 421 638  
RSE L0000635

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## DEED OF AMENDMENT

DATE 30<sup>TH</sup> SEPTEMBER 2013

### PARTY

The Trust Company (Superannuation) Limited  
ABN 49 006 421 638  
RSE L0000635  
(Trustee)

### RECITALS

- A. AMG Universal Super (**Fund**) is governed by a trust deed dated 12 May 2000 as amended from time to time (**Trust Deed**).
- B. The Trustee is the current trustee of the Fund.
- C. Clause 16 of the Trust Deed authorises the Trustee to amend all or any of the provisions of the Trust Deed subject to certain conditions and limitations.
- D. The Trustee wishes to amend the Trust Deed, to facilitate the provision of a MySuper product in the Fund, in the manner set out in this deed and is satisfied that the amendments made by this deed are consistent with, and do not contravene the limitations contained in, clause 16 of the Trust Deed.

### OPERATIVE PROVISIONS

#### 1. AMENDMENT TO TRUST DEED

The Trust Deed is amended by deleting all of the existing clauses, schedules and headings in the Trust Deed and inserting in their place the clauses, schedules and headings set out in the annexure to this deed.

#### 2. GOVERNING LAW

This deed is governed by the law in force in Victoria.

#### 3. NOT A RESETTLEMENT

The amendments effected by this deed do not constitute the declaration of new trusts or a resettlement.

#### 4. DATE OF EFFECT

This deed shall take effect on and from the date of execution.

#### 5. COUNTERPARTS

This deed may be executed in counterparts.

**EXECUTED** as a deed.

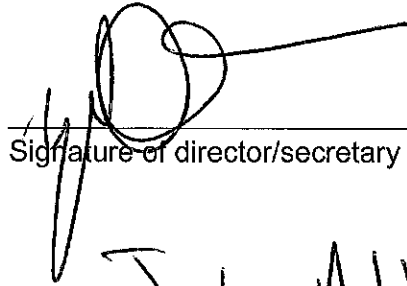
Executed by **The Trust Company  
(Superannuation) Limited** ABN 49 006  
421 638:



\_\_\_\_\_  
Signature of director

DAVID GLESBY

\_\_\_\_\_  
Name



\_\_\_\_\_  
Signature of director/secretary

John Atkin

\_\_\_\_\_  
Name

# Annexure

## **SCHEDULE 1 - PART 1**

### **GENERAL**

#### **1.1 Purposes for which Fund is maintained**

The Trustee must ensure that the Fund is maintained solely:

- (a) for one or more Core Purposes; or
- (b) for one or more Core Purposes and one or more Ancillary Purposes.

#### **1.2 Legislative 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.

#### **1.3 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.

#### **1.4 Specific Requirements**

- (a) To the extent that any provision (or part of a provision) in this Deed conflicts with Part 6 of SIS.
  - (i) that provision (or part of a provision) must be read down, changed construed or severed to avoid such conflict; and
  - (ii) to the extent that such conflict cannot be avoided, the provision (or part of a provision) will be of no effect.
- (b) If a provision of this Deed would otherwise be void because it:
  - (i) subjects the Trustee to direction by another person; or
  - (ii) permits a person to exercise a discretion without the consent of the Trustee;

the Trustee's consent is required for the giving of the direction or the exercise of the discretion,

- (c) Where a provision of the Relevant Law is required to be included in this Deed or in order to comply with the with the Relevant Law, such provision is deemed to be included in this Deed for so long as the provision is required to be so included.

- (d) Without limiting paragraphs 1.4(a) and 1.4(c), the following provisions of the Relevant Law (and any corresponding regulations) apply despite any other provisions of this Deed, for so long as the provision of the Relevant Law is required to so apply:
  - (i) section 52 of SIS (Covenants to be included in governing rules);
  - (ii) section 56 of SIS (Indemnification of trustee from assets of entity);
  - (iii) section 57 of SIS (Indemnification of directors of trustee from assets of entity);
  - (iv) section 58 of SIS (Trustee not to be subject to direction);
  - (v) section 59 of SIS (Exercise of discretion by person other than trustee);
  - (vi) section 60 of SIS (Amendment of governing rules); and
  - (vii) section 60A of SIS (Dismissal of trustee of public offer entity).

#### 1.5 **Protection of Member's benefits**

Despite any contrary provisions in this Deed:

- (a) the Trustee will only pay a Member's benefit to, or to the order of, that Member or as otherwise permitted by the Relevant Law in respect of that Member; and
- (b) the accrued benefit of a Member cannot be reduced or the Member deprived of that benefit in any circumstances except as permitted by the Relevant Law or approved by the Regulator.

### **SCHEDULE 1 - PART 2**

#### **SPECIFIC LEGISLATIVE COMPLIANCE AND OPERATIVE PROVISIONS**

##### 2.1 **Definitions**

**Ancillary Purpose** means the provision of benefits for each Member on or after the termination of the Member's employment with an employer who had (or any of whose associates had) at any time, contributed to the Fund in relation to the Member and such other purposes that are prescribed as ancillary purposes by or for the purposes of SIS.

**Beneficiary** in respect of a Member means:

- (a) a Dependant; or
- (b) the legal personal representative of the Member; or
- (c) any other person to whom the Trustee is permitted to pay a death benefit in accordance with the Relevant Law.

**Child Account** means an account maintained by the Trustee in respect of a Child Member.

**Child Member** means a Member who is:

- (a) less than 18 years of age; and
- (b) not a Standard Employer-Sponsored Member.

**Core Purpose** means the provision of benefits for each Member on retirement and such other purposes that are prescribed as core purposes by or for the purposes of SIS.

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

**Dependant** means:

- (a) the Spouse and any child of a Member;
- (b) any other person who, in the opinion of the Trustee, was wholly or partially dependent on the Member in any way; and
- (c) any person with whom the Member has an Interdependency Relationship, at the time of their death or other relevant time.

**Entitlement** means the benefit payable to a Member on withdrawal from the Fund.

**Family Law Act** means the *Family Law Act 1975* (Cth).

**Interdependency Relationship** has the meaning set out in SIS.

**Regulator** has the meaning set out in SIS.

**Relevant Law** means the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry Supervision Regulations, the Corporations Act 2001, the Corporations Regulations, the Income Tax Assessment Act 1997, the Income Tax Assessment Regulations, the Superannuation (Unclaimed Money and Lost Members) Act 1999, the Family Law Act 1975, the Anti-Money Laundering and Counter Terrorism Financing Act 2006, the Bankruptcy Act 1966 and any other applicable Act, regulation or other lawful requirement (as amended from time to time) with which the Trustee or the Fund must comply (whether to avoid breaching the relevant Act, regulation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose).

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

**Spouse** has the meaning set out in SIS.

**Standard Employer-Sponsored Member** has the meaning set out in SIS.

**Tax Act** means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).



## 2.2 Trustee and licenses

The Trustee must hold all relevant licenses and authorities as required under the Relevant Law.

## 2.3 Transfers of Entitlements

- (a) If a Member requests in writing to the Trustee that all or part of their Entitlement in the Fund be paid or transferred to such person or other body as the Member may nominate;
  - (i) if such payment or transfer would be required by SIS, the Trustee must; and
  - (ii) in all other cases the Trustee may  
  
pay or transfer the amount of that Member's Entitlement or that part of it to that person or other body requested within such period of time as specified by, and subject to, SIS.
- (b) Before a payment or transfer is made in accordance with paragraph 2.3(a), if required by SIS, the Trustee must provide the Member with information that relates to the payment or transfer of their entitlement from the Fund and that satisfies the relevant provisions of SIS.
- (c) If the Trustee requires further information in relation to the request made by the Member pursuant to paragraph 2.3(a), the Trustee must, if required by SIS, ask the Member for the information required as soon as practicable after receiving such request from the Member.
- (d) The Trustee:
  - (i) may refuse to carry out a request made by the Member pursuant to paragraph 2.3(a)(i) if:
    - (A) such refusal is in accordance with the relevant provisions of SIS; or
    - (B) its power to pay or transfer a Member's Entitlement has been suspended by the Regulator pursuant to the relevant provisions of SIS; or
  - (ii) may:
    - (A) refuse to carry out a request made by the Member pursuant to paragraph 2.3(a)(i) if its power to pay or transfer a Member's Entitlement has been varied by the Regulator pursuant to the relevant provisions of SIS; and
    - (B) in the event that the Trustee's power to pay or transfer a Member's Entitlement has been varied in accordance with paragraph 2.3(d)(ii)(A), the Trustee may, subject to the consent of the Member, pay or transfer a

Member's Entitlement in accordance with such variation.

- (e) If, pursuant to paragraph 2.3(d), the Trustee refuses to carry out a request made by the Member in accordance with paragraph 2.3(a)(i), it must inform the Member of the reason for such refusal or variation.
- (f) A payment of any amount of a Member's Entitlement made pursuant to this clause 2.3 will be in complete discharge and satisfaction of the Trustee's obligations to the Member in respect of that amount of the Member's Entitlement.

#### **2.4 Adjustment of Benefits**

Subject to SIS, the Trustee may adjust the benefits of a Member to take account of:

- (a) any contributions which have not been paid;
- (b) any tax, costs or expenses of the Fund;
- (c) any incorrect, inaccurate or misleading information supplied, or lack of information supplied, in respect of a Member; and
- (d) any refund or repayment of co-contributions and any other amounts as required by the Superannuation (Government Co- contribution for Low Income Earners) Act 2003 (Cth).

#### **2.5 Child Member Benefits**

Notwithstanding anything in this Deed to the contrary:

- (a) a Child Member, on satisfying a Condition of Release (as described in SIS) will be entitled to the sum of their Child Account;
- (b) a Child Member cannot exercise any right, power, discretion or approval which he or she is not empowered to validly exercise at law;
- (c) the rights and benefits of a Child Member shall be subject to SIS.

#### **2.6 Overriding Death Benefit Provisions**

- (a) The Trustee may offer a facility to Members whereby Members can specify:
  - (i) the identity of their Beneficiaries; and
  - (ii) the manner of payment of their death benefits.
- (b) As part of those arrangements, the Trustee may provide that the specifications by Members can take the form of:
  - (i) a nomination which is binding on the Trustee and which complies with the relevant requirements of SIS;
  - (ii) death benefit categories formulated by the Trustee and which are binding on the Trustee; or

- (iii) a request for a pension to be paid to a reversionary beneficiary or beneficiaries.
- (c) Where the Trustee determines to offer such a facility, the terms of the facility as formulated by the Trustee will be as set out in the product disclosure statements or other Member communications issued by the Trustee from time to time.
- (d) The terms of such a facility, as set out in the product disclosure statements or other Member communications, will override any inconsistent provisions of this Deed to the extent of the inconsistency and, without limitation, such terms will override the provisions of this Deed dealing with the payment of benefits on death to the extent of any inconsistency.

## **2.7 Information requirements**

An applicant for membership, a Member, a beneficiary, a claimant for a benefit, an Employer and any other person contributing paying or transferring amounts to the Fund in respect of a Member must give to the Trustee (or the Trustee's agent) all information, evidence and proofs reasonably requested by the Trustee in order to administer the Member's benefits and the Fund in accordance with this Deed or to comply with the Relevant Law. If any of the requested information, evidence or proofs is not provided or is later found to be inaccurate or incomplete, the Trustee may reject an application or claim, refuse to accept contributions, and impose conditions on or adjust affected benefits in the manner and to the extent the Trustee considers necessary or appropriate.

## **2.8 Acceptance of Contributions**

The Trustee must not accept contributions in respect of a Member where:

- (a) the Relevant Law does not permit acceptance of such contributions; or
- (b) the Trustee determines not to accept contributions of a particular type or in particular circumstances.

## **2.9 Refund of Contributions**

The Trustee must refund a contribution if required by the Relevant Law and may refund any contribution made in error. In refunding contributions the Trustee may deduct any negative investment earnings or movement in unit price and an amount for reasonable administration and transaction costs, including an appropriate proportion of any insurance premium paid in respect of the Member or not recoverable by the Trustee.

## **2.10 Allocation of Contributions**

The Trustee must allocate contributions to a Member at the times and otherwise in accordance with the Relevant Law.

## **2.11 Limits on Splittable Contributions**

Notwithstanding any other provision of this Deed, the Trustee must only permit a Member to transfer contributions to the Member's spouse not exceeding the maximum splittable amount under, and otherwise in accordance with, the Relevant Law. The Trustee may make any other adjustments to the splittable amount that it considers necessary or appropriate having regard to its Tax obligations.

#### **2.12 Power to Make Rules and Policies**

The Trustee may make rules and adopt policies in relation to any matters that the Trustee considers appropriate for the convenient administration of the Fund. The Trustee shall not be liable for not doing something that the Trustee is permitted but not required to do under any policy of the Trustee or under the Relevant Law.

#### **2.13 Compliance Requirements for Transfers**

The Trustee is empowered to make any transfer from the Fund required under the Relevant Law. All transfers out of the Fund are subject to such conditions and must be made within the timeframes required under the Relevant Law. The Trustee must provide to the person responsible for the transferred amount such information as the Relevant Law requires.

#### **2.14 Illiquid Investments**

Where a Member's benefits are wholly or partly invested in an illiquid investment as a consequence of the Member exercising a choice regarding the investment of the Member's benefits, the Trustee shall not be liable for any loss, cost, expense or other liability arising from a delay in the transfer or payment of the benefit associated with a delay in realising the illiquid investment.

#### **2.15 Benefit Payment Requirements**

The Trustee may suspend consideration of a person's claim to or payment of a benefit until all required information evidence and proofs are provided to the satisfaction of the Trustee and, if the required information evidence and proofs are not provided to the Trustee's satisfaction or the Relevant Law so requires, the Trustee may withhold payment.

#### **2.16 Tax**

The Trustee may take any action (whether prospective or retrospective) that the Trustee considers necessary or appropriate to calculate, pay, deduct or take account of any Tax, including without limitation:

- (a) adopting policies relating to the application or timing of Tax credits and Tax debits to Member accounts;
- (b) adopting policies relating to the acceptance of members and contributions without any required or desirable tax-related information;
- (c) adopting policies relating to the claiming of Tax refunds;
- (d) reducing or otherwise adjusting contributions to or benefits or other amounts payable from the Fund, in which case the Member will be entitled to only the net amount;
- (e) providing information and making payments to the Superannuation Regulator;
- (f) establishing reserves and making provisions in the accounts of the Fund; and

- (g) charging to recover the costs and expenses attributable to administering any Tax requirement.

Each Member is liable for all Tax incurred by the Trustee or the Fund in relation to an excess contribution in respect of that Member and must indemnify the Trustee in respect of such Tax.

#### 2.17 **Membership**

For the avoidance of doubt, if the Trustee receives, or determines that it holds, an amount (**Residual Amount**) that relates to the benefits that a person has previously received (other than the Residual Amount), and the Trustee determines that the Residual Amount is to be paid to the person, the Residual Amount will not result in the issue of a new interest but forms part of the original interest associated with the benefits previously paid to the person.

#### 2.18 **Electronic Delivery**

Without limiting the means by which notices may be given or information may be disseminated, the Trustee may give notice or provide information by any form of data or image transmission or communication facility or medium, including without limitation facsimile, electronic mail and the internet, in which case the notice will be considered to have been received when transmitted, accessed or published (as the case may be).

#### 2.19 **Pensions**

##### (a) **Form of Pension**

The Trustee may pay any form of pension that is approved by the Trustee and permitted by the Relevant Law.

##### (b) **Payment of Pension**

Where a Member or beneficiary has elected to be paid a pension, the pension may be paid in such manner as is agreed between the Trustee and the Member or beneficiary, or in the absence of agreement as the Trustee determines provided the pension satisfies the standards of a pension referred to the Relevant Law.

##### (c) **Deemed inclusion of Relevant Law**

This Deed is deemed to include each requirement of the Relevant Law that the governing rules under which a pension is provided must satisfy for the pension to be a relevant pension for the purposes of the Relevant Law.

##### (d) **Commutation**

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, subject to the requirements of the Relevant Law.

(e) **Variation**

The Trustee may vary any terms and conditions of a pension or impose additional terms and conditions to ensure that the relevant pension does and will continue to comply with Relevant Law or in any other manner contemplated by the Relevant Law, without necessarily commuting the pension.

(f) **Reversionary Beneficiary**

A Member may nominate one or more Dependants as a reversionary beneficiary to whom the pension must be transferred after the Member's death provided that the nomination is consistent with the Relevant Law. The Trustee must reject any nomination that is not consistent with the Relevant Law, in which case, if the Member does not provide a nomination that is consistent with the Relevant Law, the balance of the pension as at the Member's death must be paid to the reversionary beneficiary as a lump sum or paid in accordance with this Deed at the Trustee's discretion.

(g) **Commutation of Reversionary Beneficiary Pension**

Subject to the requirements of the Relevant Law, a reversionary beneficiary may elect to:

- (a) commute a part or all of a pension by notifying the Trustee in a manner approved by the Trustee; or
- (b) limit any right of commutation that the reversionary beneficiary might otherwise have to ensure that the pension complies with the Relevant Law,

provided that the Trustee must commute a reversionary beneficiary's pension if and to the extent that the Relevant Law so requires.

**2.20 Overriding Effect of Parts 1 and 2**

Parts 1 and 2 of Schedule 1 of the Deed operate as follows:

- (a) Definitions defined for the purposes of Parts 1 and 2 of Schedule 1 will apply only to Parts 1 and 2 of Schedule 1;
- (b) Clauses contained in Parts 1 and 2 of Schedule 1 override any inconsistent provisions of the Deed to the extent of the inconsistency.

**1. DEFINITIONS AND INTERPRETATIONS**

**1.1 Definitions from SIS**

In this Deed unless the contrary intention appears, the following expressions have the meanings given to them in SIS:

- "Accrued Default Amount";
- "Approved Trustee";

- "Choice Interest"
- "Compassionate Ground";
- "Civil Penalty Order";
- "Constitutional Corporation";
- "Eligible Rollover Fund";
- "Gainfully Employed" and "Gainful Employment";
- "Legal Personal Representative";
- "MySuper Interest";
- "Preservation Age";
- "Regulated Superannuation Fund";
- "Severe Financial Hardship";
- "Spouse".

## 1.2 Definitions

In this Deed unless the contrary intention appears, the following expressions have the meanings given to them in this **clause 1.2**.

**"Account Balance"** means in relation to a Member or former Member, the balance standing to the Member's credit in the Member's Member Account.

**"Administrator"** means a person appointed to administer, the Fund pursuant to **clause 10.3(a)**.

**"amend"** includes delete or replace.

**"Assets of the Fund"** means any form of property including cash held by the Trustee on trust in accordance with the terms of this Deed.

**"Auditor"** means a person or persons eligible to act as an auditor in accordance with Superannuation Law or a firm of such persons appointed by the Trustee under **clause 14.4(a)**.

**"Authorised Investments"** means the investments more particularly described in **clause 11.3** and any of them.

**"Child"** in relation to a person includes:

- (a) a child being the issue of the person;
- (b) an adopted child; and
- (c) a step-child.

**"Commodities"** means any tangible personal property, currency, interest rate, financial index or indices (including any share index) or such other tangible or intangible thing determined by the Trustee for the purposes of this definition.

**"Contributions-Splitting ETP"** has the same meaning as in the Income Tax Assessment Act.

**"Custodian"** means any person appointed under **clause 10.3(d)** to perform the functions of custodian of part or all of the Fund.

**"Deed"** means this document as amended from time to time, and includes any schedules.

**"Dependant"** of a Member means any person who is or was at the relevant time:

- (a) a Spouse of the Member;
- (b) a Child of the Member; or
- (c) dependent upon the Member for maintenance or support.

**"Derivative"** means any financial instrument or arrangement whose economic performance is dependent on any change in interest rate, currency value or exchange rate or the economic performance of another security or Commodity.

**"Eligible Person"** means a person who is eligible under Superannuation Law to join, and remain a member of, a Regulated Superannuation Fund.

**"Employee"** has the meaning given to that term in section 1 5A of SIS, and in relation to any Participating Employer means an employee of that Participating Employer.

**"Employer"** has the meaning given to that term in section 1 5A of SIS, and in relation to a Member, or former Member, at any time, means an employer of that Member at that time.

**"Expenses"** means the expenses listed in **clause 13.1**.

**"Financial Year"** means each successive period of 12 Months commencing on 1 July and ending on 30 June, or any part of such period that may occur at the commencement or termination of the Fund.

**"Fund"** means the superannuation trust fund constituted by this Deed.

**"Index Linked Securities"** means any investment whose economic performance is dependent on changes in any index.

**"Insurance Investments"** means any investment offered by an insurance company or life office whether the same involves a deposit, a loan, payment of premiums, acquisition of a right or interest in or arising out of insurance or life policies, or in a statutory fund or any similar investment.

**"Investment Manager"** means a person appointed as an investment manager pursuant to **clause 10.3(c)**.

**"Investment Portfolio"** means a portfolio established by the Trustee under **clause 11.2(a)**.

**"Manager"** means a person appointed as the manager of the Fund pursuant to **clause 10.3(b)**.



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

**"Member"** means any Eligible Person who:

- (a) has been admitted as a Member; and
- (b) has not ceased to be a Member

**"Member Account"** means an account maintained for a Member under **clause 6.5**.

**"Month"** means a calendar month.

**"Offer Document"** means any document issued by the Trustee offering membership of the Fund.

**"Participating Employer"** means any person who:

- (a) is admitted as a Participating Employer to the Fund; and
- (b) has not ceased to participate in the Fund.

**"person"** includes partnerships, associations or corporations as the context may require.

**"policy of insurance"** means any policy of insurance or assurance of any kind taken out by the Trustee and covering a Member, or a group of Members.

**"Preserved Benefit"** means:

- (a) the amount of any benefit or any part of a benefit; or
- (b) in relation to a Member who has not become entitled to a benefit, the balance in the Member's Member Account or any part of it,

which comprises the amount of the Member's Preserved Benefit for the purposes of SIS, or as otherwise determined by the Trustee, and which has not become unrestricted non-preserved benefits under SIS.

**"Regulations"** means the regulations to SIS.

**"Repos"** means agreements, arrangements or understandings with a person whereby any Investments are transferred to or Investments are acquired from that person on the basis that the transaction will be reversed on a predetermined rate and at an agreed price.

**"Reserve Account"** means an account kept pursuant to **clause 6.1**.

**"Retire"** has the meaning assigned to that expression in SIS and **"Retires"**, **"Retired"** and **"Retirement"** have corresponding meanings.

**"RITS"** means the Reserve Bank Information & Transfer System.

**"Service"** means service as an Employee of an Employer and includes service as a full-time or part-time salaried director of an Employer and such other categories of service as a Participating Employer and the Trustee may agree to

from time to time in respect of a Member.

The following periods shall, at the Trustee's discretion, be included in a Member's Service:

- (a) any period during which the Member is employed by any other person directly or indirectly allied or associated with an Employer;
- (b) any period of employment during which the Member is employed (whether in military employment or otherwise) in connection with or in contemplation of hostilities or compulsory national service;
- (c) any period of absence from duty with an Employer which by operation of any statute is deemed to be employment with that Employer;
- (d) any period of absence from duty with an Employer not exceeding six (6) Months (or such longer period as the Trustee upon the advice of the Employer may determine in any particular case) where such absence is due to illness or injury; and
- (e) the whole or any part of a period of absence from duty with an Employer which that Employer determines with the agreement of the Trustee shall be regarded as service of the Member with the Employer.

**"Shortfall Component"** has the meaning given to that expression in the Superannuation Guarantee (Administration) Act 1992.

**"SIS"** means the Superannuation Industry (Supervision) Act 1993 and includes the Regulations to it.

**"Splittable Contribution"** means a contribution to the Fund or such other amount stipulated under the Superannuation Law allocated on or after 1 January 2006 but does not include:

- (a) an amount that has been rolled over or transferred to the Fund;
- (b) an amount that has been allotted to or rolled over within the Fund due to a previous contributions splitting application under the Superannuation Law;
- (c) a lump sum payment from an eligible non-resident non-complying superannuation fund;
- (d) a CGT exempt eligible termination payment received pursuant to the small business retirement exemption under the Income Tax Assessment Act;
- (e) such other amounts as prescribed by the Superannuation Law.

**"Superannuation Entity"** means any entity which may under Superannuation Law receive a transfer or rollover of a Member's benefit or from which the Trustee may accept a transfer or rollover of benefits. A Superannuation Entity includes an Eligible Rollover Fund.

**"Superannuation Guarantee Charge"** means a charge or tax imposed on employees for not making certain superannuation contributions or not providing certain superannuation contributions or not providing certain superannuation benefits.

**"Superannuation Law"** means the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry Supervision Regulations, the Corporations Act 2001, the Corporations Regulations, the Income Tax Assessment Act 1997, the Income Tax Assessment Regulations, the Superannuation (Unclaimed Money and Lost Members) Act 1999, the Family Law Act 1975, the Anti-Money Laundering and Counter Terrorism Financing Act 2006, the Bankruptcy Act 1966 and any other applicable Act, regulation or other lawful requirement (as amended from time to time) with which the Trustee or the Fund must comply (whether to avoid breaching the relevant Act, regulation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose).

**"Superannuation Regulator"** means the government body or bodies responsible for the regulation of, or the administration of tax concessions available to, superannuation funds in Australia, including:

- (a) the Australian Prudential Regulation Authority;
- (b) the Australian Securities & Investments Commission; and
- (c) the Australian Taxation Office.

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

**"Taxed Splittable Contribution"** is a contribution to the Fund which is taxable under the Income Tax Assessment Act or such other amounts stipulated by the Superannuation Law;

**"Termination Date"** means the date set by the Trustee under **clause 15.1**.

**"Total and Permanent Disablement"** in relation to a Member means:

- (a) in relation to a benefit to be provided under a policy of insurance, the definition of "total and permanent disablement" or a corresponding term in the policy of insurance; or
- (b) otherwise, ill-health of the Member, whether physical or mental, such that the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience

**"Total Disability"** in relation to a Member means in relation to a benefit to be provided under a policy of insurance, the definition of "total disability" or a corresponding term in the policy of insurance.

**"Trustee"** means the person or persons for the time being acting as trustee of the Fund.

**"Untaxed Splittable Contribution"** is a contribution made to the Fund which is not a taxable contribution under section 274 of the Income Tax Assessment Act or

such other amounts stipulated by the Superannuation Law

### **1.3 Statutes**

- (a) References in this Deed to any statutory enactment include, and shall be construed as, references to the enactment as amended, modified, consolidated, replaced or re-enacted from time to time.
- (b) References in this Deed to a section, regulation or other specific provision of a statute, ordinance, code, law or statutory instrument includes the equivalent section, regulation or provision in any consolidation, amendment, re-enactment or replacement of that statute, ordinance, code or statutory instrument.

### **1.4 Plurals and Genders**

Words importing the singular number include the plural and vice versa and words importing any gender include all genders.

### **1.5 Clauses, Schedules and Rules**

Any reference in this Deed to a Clause, Schedule or Rule is a reference to the corresponding Clause, Schedule or Rule of this Deed.

### **1.6 Headings and Sub-Headings**

The use of headings in this Deed is for convenience only, and headings do not form part of, and are not to be used in the interpretation of, any provision of this Deed.

### **1.7 Bodies and Associations**

References to authorities, institutes, associations and bodies whether statutory or otherwise, in the event of any such authority, institute, association or body ceasing to exist or being reconstituted, renamed or replaced or its powers or functions being transferred to any other authority, institute, association or body, is deemed to refer respectively to the authority, institute, association or body established or constituted to replace it or succeeding to its powers or functions or any of them.

## **2. CONSTITUTION OF TRUST**

### **2.1 Commencement Date**

The terms of this Deed commence on its execution.

### **2.2 Constitution on acceptance of contribution**

The Fund is constituted as a trust fund to be held by the Trustee under and in accordance with the terms of this Deed on the payment to and acceptance by the Trustee of a contribution made for the purposes of the Fund.

### 2.3 Declaration of Trust

The Trustee declares that it will hold on the trusts set out in this Deed:

- (a) any contributions paid to and accepted by it for the purposes of the Fund; and
- (b) any property acquired by it on the investment of contributions made to the Fund.

### 2.4 Name of Fund

The superannuation trust fund constituted under this Deed is known as "**AMG Universal Super**".

### 2.5 Fund

The trust fund of the Fund includes:

- (a) the initial investment settled on commencement of the Fund;
- (b) such contributions as may be made from time to time by Participating Employers, Members and other persons;
- (c) all assets, property, benefits or policies in which the Fund is from time to time invested; and
- (d) all earnings from time to time arising from contributions or investments.

### 2.6 Purpose

The Fund must be maintained solely for one or more of the core or ancillary purposes identified in SIS as the purposes for which a Regulated Superannuation Fund must be solely maintained.

### 2.7 Compliance

- (a) The Trustee may comply with a requirement of Superannuation Law notwithstanding that:
  - (i) compliance with the Superannuation Law conflicts with an express provision of this Deed;
  - (ii) the Superannuation Law is not required under SIS or otherwise to be included in this Deed.
- (b) The Trustee does not commit any breach of trust by virtue of any act or thing done to comply with any Superannuation Law.
- (c) Notwithstanding any other provision in this Deed:
  - (i) the Trustee in the exercise of its powers under this Deed is not subject to the direction of any other person

except where the Superannuation Law permits the direction to be given to the Trustee by that person; and

- (ii) where any provision of the Deed would permit any person to give a direction to the Trustee other than as permitted by the Superannuation Law the Trustee must disregard any direction given by that person, and the Trustee may alone exercise the power, authority or discretion which is by the terms of this Deed subject to the direction of that other person.
- (d) Notwithstanding any other provision in this Deed, where any discretion under this Deed may be exercised by a person other than the Trustee:
- (i) the person on whom the discretion is conferred may not exercise that discretion in any case unless the Trustee consents to the exercise of the discretion in the manner in which the person proposes to exercise the discretion;
  - (ii) the provision conferring the discretion is deemed to require the consent of the Trustee to the exercise of the discretion; and
  - (iii) the person on whom the discretion is conferred may exercise the discretion with the Trustee's consent.

## 2.8 MySuper Interests and Choice Interests

- (a) The Trustee may, from such date as it determines, create MySuper Interests and Choice Interests in the Fund.
- (b) Despite anything to the contrary in this Deed, in relation to MySuper Interests:
  - (i) to the extent that the assets are attributed to MySuper Interests, there must be a single diversified investment strategy in relation to those assets;
  - (ii) all Members who hold a MySuper Interest must be entitled to access the same options, benefits and facilities except to the extent that a benefit is provided by taking out risk insurance;
  - (iii) amounts must be attributed to Members in a way that does not stream gains or losses that relate to any assets of the Fund to only some Members, except to the extent permitted by Relevant Law;
  - (iv) the same process is to apply to all MySuper Interests in attributing amounts to Members, except to the extent permitted by Relevant Law;

- (v) if fee subsidisation by Employers is permitted, the subsidisation must not favour one Member who holds a MySuper Interest and is an Employee of a subsidising Employer over another such Member who is an Employee of that Employer;
  - (vi) the only limitations on the source or kind of contributions made on behalf of persons who hold a MySuper Interest are those permitted by Relevant Law;
  - (vii) a MySuper Interest in the Fund cannot be replaced with any other interest unless the replacement is with another MySuper Interest or the Member who holds the MySuper Interest consents in writing to that replacement in any manner required by Relevant Law or the Relevant Law otherwise permits;
  - (viii) a MySuper Interest in the Fund cannot be replaced with a Choice Interest (or any other interest) in another superannuation entity unless:
    - (A) the replacement is permitted, or is required, under a law of the Commonwealth; or
    - (B) the person who holds the MySuper Interest consents in writing to the replacement with the new interest in any manner required by Relevant Law.
  - (ix) to the extent that assets of the Fund are attributed to MySuper Interests, a pension is not payable out of those assets on the satisfaction of a condition of release except as permitted by Relevant Law;
  - (x) no Member who holds a MySuper Interest is precluded from holding a Choice Interest because of that fact; and
  - (xi) no Member who holds a Choice Interest is precluded from holding a MySuper Interest because of that fact.
- (c) The Trustee must deal with Accrued Default Amounts in a manner consistent with Relevant Law.
  - (d) The Trustee may do anything (including, but not limited to, make any election), or refrain from doing anything, required in order to comply with Relevant Law in relation to MySuper interests, Choice Interests and Accrued Default Amounts.

### **3. PARTICIPATING EMPLOYERS**

#### **3.1 Admission of Participating Employer**

- (a) An Employer may apply to the Trustee to be admitted as a Participating Employer for the purpose of making contributions for any of its Employees who become Members.
- (b) A Member may apply to the Trustee for the Member's Employer to be admitted as a Participating Employer for the purpose of making contributions for the Member.

#### **3.2 Trustee may reject application for Participation**

The Trustee may:

- (a) accept or reject an application to become a Participating Employer without giving any reason;
- (b) impose any conditions when accepting an application; and
- (c) at any time, remove or vary any condition so imposed.

#### **3.3 Date of Admission**

An applicant becomes a Participating Employer on the date determined by the Trustee.

#### **3.4 Information to be given to Employers or prospective Employers**

The Trustee must give a new or prospective Participating Employer such information as is prescribed by the Superannuation Law.

#### **3.5 Terms of Participation**

- (a) Each Participating Employer is bound by this Deed.
- (b) The Trustee may regard any instruction given or purported to be given by an officer of a Participating Employer as a valid instruction.
- (c) A Participating Employer may instruct the Trustee that contributions made by the Employer for any of its Employees are subject to a vesting scale.

#### **3.6 Termination of Participation**

- (a) A Participating Employer ceases to participate in the Fund if a written notice to that effect is given by:
  - (i) the Employer to the Trustee;
  - (ii) the Member to the Trustee; or
  - (iii) the Trustee to the Employer.
- (b) The Employer ceases to participate in the Fund with effect on the date determined by the Trustee.
- (c) A Member may remain a Member despite their Employer ceasing to



participate in the Fund.

### **3.7 Substituted Employer**

(a) Where:

- (i) the whole or substantially the whole of the assets of a Participating Employer's business are acquired by another person; or
- (ii) another person commences to employ all or any Members formerly employed by a Participating Employer,

the Trustee may elect to accept the performance by that other person of the obligations of the Participating Employer under this Deed in place of the performance of those obligations by the Participating Employer.

- (b) Acceptance by the Trustee of performance of a Participating Employer's obligations by another person discharges the Participating Employer from any further obligations under this Deed.

### **3.8 Consequences of termination**

On termination of a Participating Employer's participation taking effect:

- (a) no persons shall be admitted as Members as Employees of the former Participating Employer;
- (b) the former Participating Employer must not make further contributions to the Fund except contributions due prior to the date of termination.

### **3.9 Rights of Employer maintained**

Neither membership of the Fund nor anything contained in this Deed in any way prejudices or affects the right of a Participating Employer to dismiss any Employee or to vary the terms of an Employee's employment, and neither membership of the Fund nor the rights or benefits of a Member under this Deed may be used as grounds for granting or increasing damages in any action brought by any Employee against the Participating Employer whether in respect of any alleged wrongful dismissal or otherwise.

### **3.10 Payment to Participating Employer**

The Trustee must not pay any part of the Fund to a Participating Employer if to do so would breach the Superannuation Law.

## **4. MEMBERS**

### **4.1 Application after nomination by Participating Employer**

An Employee who is an Eligible Person and who has been nominated for membership of the Fund by a Participating Employer, may apply to become a Member in a form approved by the Trustee.

#### **4.2 Application by other Eligible Persons**

An Eligible Person (other than an Employee of a Participating Employer) may otherwise apply to become a Member in a form approved by the Trustee.

#### **4.3 Admission without formal application**

Where the Trustee considers that special or extenuating circumstances exist the Trustee may, subject to the Superannuation Law and such specific terms, conditions and restrictions as the Trustee considers appropriate, deem a person who is or was an Employee of a Participating Employer and eligible to become a Member, or is or was otherwise eligible to become a Member, but who has not actually made such an application, to have been admitted as a Member with effect on a date determined by the Trustee, not being earlier than the date on which the person first became eligible to apply for membership.

#### **4.4 Applicant to provide information**

An Eligible Person who wishes to become a Member must:

- (a) have any medical examination; and
- (b) provide any information or take any other steps, which the Trustee requests in relation to the application.

#### **4.5 Membership despite position held**

A director, officer or employee of a Participating Employer or Trustee is eligible to be a Member regardless of their position.

#### **4.6 Admission to membership**

- (a) The Trustee may:
  - (i) accept or reject an application to become a Member without giving any reason;
  - (ii) impose any conditions when accepting an application; and
  - (iii) at any time remove or vary any condition so imposed.
- (b) The Trustee must reject an application unless the applicant is an Eligible Person.

#### **4.7 Date of admission**

An applicant becomes a Member on the date determined by the Trustee, or if the Trustee makes no determination, the date of acceptance of the application.

#### **4.8 Information to be given to Members**

The Trustee must:

- (a) provide to prospective Members, prior to accepting an application for membership, such information as is prescribed by Superannuation Law;

- (b) provide such information to a new Member as is prescribed by Superannuation Law.

#### **4.9 Subsequent failure to provide information**

If a Member fails after admission to provide information or evidence as and when required by the Trustee and to its satisfaction, the Trustee may refuse to accept any further contributions by or for that Member.

#### **4.10 Members bound**

Each Member is bound by this Deed.

#### **4.11 Interest in the Fund**

A Member has a beneficial interest in the Fund, but is not entitled to:

- (a) interfere with the exercise of the Trustee's powers or discretions;
- (b) exercise any rights in relation to any of the Assets of the Fund; or
- (c) require the transfer to the Member of any of the Assets of the Fund;

except as expressly provided in this document.

#### **4.12 Termination of Membership**

A person ceases to be a Member on the first to occur of:

- (a) the Member's benefit being paid in full;
- (b) transfer of the full amount of the Member's Member Account to another Superannuation Entity; and
- (c) the Member's entitlement to benefits being terminated.

#### **4.13 Cooling Off Period**

This Deed is taken to include the provisions described in Sections 171(2) to 171(5) of SIS and the Trustee must comply with those provisions.

### **5. CONTRIBUTIONS**

#### **5.1 Member contributions**

A Member may contribute any amount which the Trustee accepts.

#### **5.2 Contributions by other persons**

- (a) A Participating Employer may:
  - (i) contribute to the Fund for a Member any amount which the Trustee accepts; or
  - (ii) suspend or reduce its contributions for a Member by giving notice in writing to the Trustee.
- (b) If Superannuation Law permits, the Trustee may accept contributions for a

Member from any other person.

### 5.3 **Shortfall Component**

The Trustee may accept as a contribution in respect of a Member a Shortfall Component.

### 5.4 **Payment of contributions**

- (a) A contribution may be paid in cash or by transfer of assets which are Authorised Investments to the Fund.
- (b) The Trustee may debit any expenses in connection with the transfer from the Member's Contribution Account or make other arrangements with the Member for payment of those expenses.
- (c) A contribution may be made directly to a delegate of the Trustee.

### 5.5 **Discretion to refuse contributions**

The Trustee may refuse to accept all or any part of a contribution from any person without giving any reason.

### 5.6 **Cessation of contributions**

Contributions must cease to be made for a Member when the Member:

- (a) ceases to be a Member; or
- (b) attains an age at which Superannuation Law prohibits the acceptance of those contributions.

## 6. **ACCOUNTING FOR MEMBERS**

### 6.1 **Establishment of Reserve Account**

The Trustee must maintain a Reserve Account for the Fund.

### 6.2 **Crediting of Reserve Account**

The Trustee must credit to the Reserve Account:

- (a) such proportion of contributions made under **clauses 5.1 and 5.2** as the Trustee may from time to time determine to be necessary for payment of the Expenses of the Fund;
- (b) all income earned on the Fund's investments;
- (c) any gains on the realisation of any of the Fund's investments, and any other accretions to or arising out of the Fund's investments;
- (d) any other amounts which are payable to the Reserve Account under this Deed or in accordance with Superannuation Law; and
- (e) any moneys not required for the payment of benefits in accordance with the Deed.

### 6.3 **Debiting of Reserve Account**

The Trustee must debit to the Reserve Account:

- (a) any losses on realisation of any of the Fund's investments;
- (b) any amounts applied by the Trustee in accordance with **clause 6.4**.

### 6.4 **Application of Reserve Account Credit**

The Trustee may apply the Reserve Account for any of the following purposes:

- (a) in payment of Expenses;
- (b) by allocation of interest to Members' Member Accounts;
- (c) to augment retirement benefits for Members in proportion to their respective interests in the Fund;
- (d) to provide additional individual benefits other than retirement benefits for all Members on an equitable basis;
- (e) to avoid large fluctuations in the investment returns in accordance with any reserving policy determined by the Trustee from time to time; and
- (f) for any other purpose permitted by Superannuation Law.

### 6.5 **Establishment of Member Account**

The Trustee must maintain for each Member an account referred to as the Member Account.

### 6.6 **Crediting and Debiting of Member Account**

- (a) The Trustee must credit to each Member Account maintained in respect of a Member:
  - (i) any contributions made by or for the benefit of the Member not otherwise dealt with under clause 6.2(a);
  - (ii) Shortfall Components received for the Member;
  - (iii) the proceeds of any policy of insurance received in respect of the Member;
  - (iv) allocations of net earnings of the Fund (if positive) pursuant to clause 6.7;
  - (v) any amount applied by the Trustee for the benefit of the Member pursuant to clause 6.4;
  - (vi) any amounts transferred to the Fund for the credit of the Member;
  - (vii) any other amount held or applied for the Member's benefit pursuant to this Deed.

- (b) The Trustee must debit to each Member Account:
- (i) the amount of any benefit paid in respect of the Member;
  - (ii) the amount paid to another Superannuation Entity in respect of the Member;
  - (iii) any insurance premiums payable in respect of the Member which the Trustee decides to debit to the account;
  - (iv) any Expenses which the Trustee decides to debit to the account;
  - (v) the Member's share of any Expenses which the Trustee decides to debit to the account;
  - (vi) any Expense the Trustee determines is properly attributable to the Member's Member Account; and
  - (vii) allocations of net earnings of the Fund (if negative) pursuant to **clause 6.7**.

#### **6.7 Allocation of income and profits**

- (a) The Trustee may from time to time allocate to each Member's Member Account a proportion of the net earnings of the Fund determined by the Trustee.
- (b) In determining the net earnings of the Fund for a period, the Trustee may take into account such of the following matters in relation to the period as the Trustee considers relevant:
- (i) earnings on the Fund's investments;
  - (ii) expenses, and any provision for Expenses, of the Fund;
  - (iii) capital gains and losses on realisation of any of the Fund's investments;
  - (iv) unrealised gains and losses arising on revaluation of any of the Fund's investments;
  - (v) allowance for capital appreciation and depreciation on any of the Fund's investments;
  - (vi) the credit in the Reserve Account;
  - (vii) any other factors which the Trustee considers relevant and Superannuation Law permits.

#### **6.8 Portfolio earning rates**

Where the Trustee has established 2 or more Investment Portfolios, the net earnings allocated to Members' Member Accounts for any period must be determined on the basis of the Investment Portfolio or Investment Portfolios applicable to each Member.

**6.9 Negative earnings**

Where for any period the Trustee determines that the net earnings of the Fund, or of any Investment Portfolio, are negative, the Trustee may allocate the loss, or any part of the loss, to Members' Member Accounts in proportions determined by the Trustee.

**6.10 Revaluation of assets**

The Trustee may at any time revalue any of the Fund's investments.

**6.11 Segregation of assets**

The Trustee may treat any part of the Fund as a separate trust fund for any purpose.

**6.12 Other Accounts**

The Trustee may maintain any other accounts as the Trustee considers appropriate.

**7. BENEFITS**

**7.1 Benefits payable to Members**

A benefit becomes payable in respect of a Member when the Member:

- (a) Retires on or after attaining the Preservation Age;
- (b) attains age 65 and asks the Trustee to pay the benefit;
- (c) attains an age at which the Superannuation Law requires the benefit to be paid to the Member;
- (d) dies;
- (e) ceases to be Gainfully Employed because of Total and Permanent Disablement;
- (f) suffers Total Disability, where the terms of the Member's membership of the Fund entitle the Member to a benefit on Total Disability;
- (g) otherwise ceases Service with a Participating Employer and asks the Trustee to pay the benefit, where the Member was admitted under clause 4.1,

or where Superannuation Law otherwise permits payment of the benefit and the Trustee agrees to pay the benefit.

**7.2 Amount of benefit payable**

- (a) Where a benefit is payable in respect of a Member other than on Total Disability, the amount of the benefit is the balance in the Member's Member Account or if a vesting scale applies, the amount determined in accordance with the vesting scale subject to any minimum benefit payable under Superannuation Law.
- (b) Where a benefit is payable in respect of a Member pursuant to Total Disability, the amount of and terms on which the benefit is paid will be in accordance with the policy of insurance pursuant to which the benefit is paid.

### 7.3 **Death Benefit**

- (a) If a Member dies before becoming entitled to a benefit, the Trustee must pay a benefit equal to the amount in the Member's Member Account to:
  - (i) one or more of the Dependants of the Member; or
  - (ii) the Legal Personal Representative of the Member, or both, in proportions determined by the Trustee.
- (b) A Member may nominate to whom and in what proportions the benefit payable on their death is to be paid. The Member may change their nomination at any time in a form approved by the Trustee. The Member's nomination is not binding on the Trustee.
- (b) If, after making reasonable enquiries, the Trustee has not found either a Dependant or Legal Personal Representative of a deceased Member, the Trustee may:
  - (i) pay the benefit to any individual who in the Trustee's opinion has a fair claim to the benefit, where the benefit can be paid to that person in accordance with Superannuation Law; or
  - (ii) retain the amount of the benefit in the Fund, if Superannuation Law permits.
- (c) If a person dies while in receipt of a pension from the Fund, payment of a benefit (if any) on that person's death is governed by **clause 7.12**.
- (d) If a Member dies after a benefit has become payable to the Member but before the benefit is paid, the amount of the benefit is an asset of the Member's estate.

### 7.4 **Required Payment Date**

The Trustee must pay or commence to pay a benefit if Superannuation Law requires.

### 7.5 **Other grounds for payment of benefits**

The Trustee may pay an amount from the Fund to or for the benefit of the Member or the Member's Dependants where:

- (a) the Member has requested payment of the amount;
- (b) the Trustee is satisfied that:
  - (i) the Member is in Severe Financial Hardship; or
  - (ii) the amount is required on a Compassionate Ground; or
  - (iii) payment of the amount is otherwise justified; and
- (c) Superannuation Law permits.

### 7.6 **Incapacity**

Where a person to whom a benefit is payable is under a legal disability or is in the Trustee's opinion incapable of managing



their own affairs for any reason, the Trustee may as Superannuation Law permits:

- (a) pay the benefit to another person on trust for the person entitled to the benefit, or otherwise to be used for the advantage of the person entitled to the benefit; and
- (b) accept the other person's receipt as a valid discharge to the Trustee of its obligations in respect of the payment of the benefit.

#### **7.7 Deferral of benefit payments**

- (a) If a Member requests, the Trustee may defer payment of all or part of the Member's benefit.
- (b) Where payment of a Member's benefit is deferred, the Trustee may (if Superannuation Law permits) continue to accept contributions for the Member.
- (c) If a Member requests, the Trustee must (if Superannuation Law permits) pay all or any part of the Member's deferred benefit.

#### **7.8 Payment of rolled over amounts**

The Trustee may pay to a Member any amount which was paid to the Fund for the Member from another Superannuation Entity if:

- (a) the Member requests payment; and
- (b) Superannuation Law permits.

#### **7.9 Benefit payment standards**

- (a) Despite any other provision of this Deed, the Trustee must not pay a benefit in respect of a Member unless, and to the extent that, Superannuation Law permits.
- (b) Any benefit which cannot be paid from the Fund as a result of clause 7.9(a):
  - (i) may be paid to another Superannuation Entity in accordance with clause 8.2;
  - (ii) may be used to purchase a non-commutable life pension or life annuity in accordance with Superannuation Law; or
  - (iii) must be retained in the Fund.

#### **7.10 Form of benefit payments**

A benefit is payable as a lump sum. However, if a person who is entitled to the benefit requests, the Trustee may pay all or any part of the benefit as a pension.

#### **7.11 Payment of lump sum benefits**

Where a benefit is payable as a lump sum, the Trustee:

- (a) must pay the benefit as soon as practicable after it becomes payable unless clause 7.7 applies; and

- (b) may pay the benefit in more than one instalment.

#### 7.12 Payment of pension benefits

- (a) Where a benefit is payable as a pension, the Trustee may:
  - (i) pay the pension from the Fund in accordance with this clause 7.12; or
  - (ii) use the benefit to purchase a pension or an annuity;
  - (iii) rollover the benefit to a Superannuation Entity nominated by the Member.
- (b) The Trustee and the person entitled to the pension may agree on the terms on which the pension is payable, but the terms must comply with any standards prescribed under Superannuation Law for the payment of pensions and as a minimum:
  - (i) the pension cannot be transferred to any person, other than a person entitled on the death of the Member or another person entitled to a reversionary pension in accordance with the terms of payment of the pension; and
  - (ii) the capital value of the pension, and the income accruing to that capital value, cannot be used as a security for a borrowing.
- (c) If the pension is to be paid from the Fund then:
  - (i) at least one payment must be made in each year; and
  - (ii) the total amount of the pension paid in each year must not be more than the maximum limit nor less than the minimum limit calculated as specified in Regulation 1.06(4) and (5).
- (d) If a person to whom a pension is payable requests, the Trustee may:
  - (i) commute to a lump sum all or any part of the capital value of the pension; and
  - (ii) adjust the amount of the pension payments following.
- (e) If a Member dies while in receipt of a pension, the Trustee may:
  - (i) pay the balance in the Member's Member Account as a lump sum in accordance with clause 7.3; or
  - (ii) pay a reversionary pension to any one or more Dependants of the deceased Member in accordance with **clause 7.12**.

#### 7.12A Pre-Retirement Non-Commutable Allocated Pensions

Where a Member attains his or her Preservation Age but does not Retire from Gainful Employment the Trustee may offer a pension on the terms specified in sub-clause 7.12 except the pension cannot be commuted and cashed as an eligible termination payment unless:

- (a) The purpose of the commutation is:
  - (i) to cash an unrestricted non-preserved benefit; or

- (ii) to pay a superannuation contributions surcharge; or
  - (iii) to give effect to a payment split in accordance with the Family Law Act 1975; or
- (b) Before commutation the pensioner has satisfied a condition of release in respect of which the cashing restriction for Preserved Benefits and restricted non-preserved benefits is nil.

**7.13 Payment by transfer of assets**

- (a) If a person who is entitled to a benefit requests, the Trustee may satisfy all or any part of the person's benefit by transferring any Assets of the Fund to that person.
- (b) Any Assets of the Fund transferred must be equivalent in value to the amount of the benefit entitlement to be satisfied by the transfer.
- (c) The Trustee must calculate the value of any Assets of the Fund transferred at market value, and any Taxes and expenses incurred as a result of the transfer must be paid by that person or deducted from the benefit.

**7.14 Payment from the Fund**

The Trustee may satisfy an entitlement to a benefit by paying the benefit to another Superannuation Entity in accordance with **clause 8.2**.

**7.15 Benefit Information**

- (a) A person who is, or may become, entitled to a benefit must:
  - (i) have any medical examination; and
  - (ii) provide any information or take any other steps, which the Trustee requests in relation to their benefit entitlement.
- (b) If the person does not comply with the request, the Trustee may withhold the payment of their benefit.

**7.16 Deduction of Tax from Benefits**

The Trustee may deduct from any benefit any amount on account of Tax paid or payable in relation to the benefit of the Member as the Trustee determines, and the recipient is entitled to receive only the net benefit after deduction of any such Tax.

**7.17 Release to Trustee**

- (a) The payment or reduction of any benefit in accordance with this **clause 7** is a complete discharge to the Trustee of its obligations in respect of the benefit as against any person claiming an interest in the benefit.
- (b) The payment by the Trustee of an amount in good faith to a person believed by the Trustee to be entitled to receive it, is a complete discharge to the Trustee of its obligations in respect of the payment of that amount.

## 7.18 Term Allocated Pensions

### 7.18.1 Definitions

The following definitions apply in this clause 7.18.

**Commencement Day** has the meaning set out in SIS.

**Complying Superannuation Fund** has the meaning set out in SIS.

**Dependant** means:

- (a) the Spouse and any child of a Member;
- (b) any other person who, in the opinion of the Trustee, was wholly or partially dependent on the Member in any way; and
- (c) any person with whom the Member has an Interdependency Relationship at the time of their death or other relevant time.

**Interdependency Relationship** has the meaning set out in SIS.

**Life Expectancy** means the life expectancy of a Member or the life expectancy of a Member's Spouse as determined in accordance with the relevant provisions of SIS.

**Market Linked Pension** means a pension described in this clause 7.18.

**Spouse** has the meaning set out in SIS.

### 7.18.2 Payment of Market Linked Pension

The Trustee may, despite the provisions of the Deed, and in accordance with the provisions of this clause 7.18, pay a Market Linked Pension or Market Linked Pensions to each Member.

### 7.18.3 SIS

No payment shall be made pursuant to this clause 7.18 unless the payment is permissible under the provisions of SIS applicable to Complying Superannuation Funds.

### 7.18.4 Market Linked Pension Requirements

Subject to the provisions of SIS applicable to Complying Superannuation Funds, any amount payable to a Member under this clause 7.18 shall be paid to that Member as a pension, on such terms as agreed by the Member and the Trustee provided that:

- (a) pension payments are made on an annual basis to the Member or the Member's reversionary beneficiary:
  - (i) throughout a period equal to the Member's Life Expectancy from the Commencement Day of the Member's Market Linked Pension (rounded up to the next whole number if the Member's Life Expectancy does not consist of a whole number of years); or

- (ii) throughout a period equal to the Member's Life Expectancy mentioned in paragraph 7.18.4(a)(i) calculated, at the option of the Member, as if the Member were up to 5 years younger on the Commencement Day; or
- (iii) throughout a period equal to either:
  - (A) the Life Expectancy of the Member's Spouse on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Member's Spouse does not consist of a whole number of years); or
  - (B) the Life Expectancy of the Member's Spouse calculated, at the option of the Member, as if their Spouse were up to 5 years younger on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Member's Spouse does not consist of a whole number of years),

as selected by the Member and approved by the Trustee  
 PROVIDED THAT:

- (A) the Member has requested that their Market Linked Pension revert to their surviving Spouse on their death; and
  - (B) the Life Expectancy of the Member's Spouse is greater than the Life Expectancy of the Member; and
  - (C) the Member has not chosen to make an arrangement mentioned in paragraph 7.18.4(a)(i) or (ii); and
- (b) the total amount of the Market Linked Pension payments to be made in a year (excluding payments by way of commutation pursuant to clause 7.18.5 but including payments made under a payment split in accordance with the Family Law Act) are determined in accordance with the relevant provisions of SIS; and
  - (c) the Market Linked Pension does not have a residual capital value; and
  - (d) the Market Linked Pension cannot be commuted except in those circumstances set out in clause 7.18.5; and
  - (e) the Market Linked Pension cannot be transferred except in those circumstances set out in clause 7.18.6; and
  - (f) if the Market Linked Pension reverts to another person, it must not have a reversionary component greater than 100% of the account balance of the Member immediately before the reversion; and
  - (g) the capital value of the Market Linked Pension, and the income from it, cannot be used as security for a borrowing; and
  - (h) the Market Linked Pension complies with any other requirements of SIS relating to such pensions which may apply from time to time.

### 7.18.5 Commutation of Market Linked Pension

- (a) The Market Linked Pension can only be commuted in the following circumstances:
  - (i) if the Market Linked Pension:
    - (A) is not funded from the commutation of particular annuities or pensions as specified under SIS; and
    - (B) the commutation is made within 6 months after the Commencement Day of the Market Linked Pension;
  - or
  - (ii) subject to paragraph 7.18.5(a)(iii), on the death of the Member or the Member's reversionary beneficiary, by payment of:
    - (A) a Lump sum or a new pension to one or more Dependants of either the Member or the Member's reversionary beneficiary; or
    - (B) a Lump sum to the legal personal representative of either the Member or the Member's reversionary beneficiary; or
    - (C) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in paragraphs 7.18.5(a)(ii)(A) or (B), a lump sum to another individual; or
  - (iii) if the Member has opted, under paragraph 7.18.4(a)(iii), for a period which is calculated in relation to the Life Expectancy of the Member's Spouse, the Market Linked Pension cannot be commuted until the death of both the Member and the Member's Spouse; or
  - (iv) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit that is a particular annuity or pension as specified under SIS; or
  - (v) to pay a superannuation contributions surcharge in accordance with the relevant provisions of SIS; or
  - (vi) to give effect to a payment split in accordance with the Family Law Act; or
  - (vii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the Corporations Act.
- (b) If the Market Linked Pension is commuted in accordance with this clause 7.18.5, the commutation amount cannot exceed the account balance of the Member immediately before the commutation.

#### **7.18.6 Transfer of Market Linked Pension**

The Market Linked Pension can only be transferred in the following circumstances:

- (a) on the death of the Member:
  - (i) to a Dependant of the Member; or
  - (ii) to the legal personal representative of the Member; or
- (b) on the death of the Member's reversionary beneficiary; or
  - (i) to a Dependant of the Member's reversionary beneficiary; or
  - (ii) to the legal personal representative of the Member's reversionary beneficiary; or
- (c) if the Market Linked Pension of the Member is transferred directly to the purchase of another benefit that is a particular annuity or pension as specified under SIS.

#### **7.19 Pre-Retirement Non-Commutable Market Linked Pensions**

Where a Member attains his or her Preservation Age but does not Retire from Gainful Employment the Trustee may offer a Market Linked Pension on the terms specified in sub-clause 7.18 except that the Market Linked Pension cannot be commuted and cashed as an eligible termination payment unless:

- (a) The purpose of the commutation is to cash an unrestricted non-preserved benefit; or
- (b) Before commutation the pensioner has satisfied a condition of release in respect of which the cashing restriction for Preserved Benefits and restricted non-preserved benefits is nil.

### **8. PAYMENTS TO THE FUND**

#### **8.1 Payment to Fund**

- (a) The Trustee may arrange with any:
  - (i) Member;
  - (ii) Participating Employer;
  - (iii) employer or former employer of a Member; or
  - (iv) Superannuation Entity, for a Superannuation Entity to pay to the Fund an amount to be allocated to the credit of any Member.
- (b) The arrangement may include that the Trustee will provide benefits for a Member which differ from the benefits set out in this Deed.
- (c) The payment to the Fund may be made without the consent of the Member if Superannuation Law permits.
- (d) The payment may be made in cash or by the transfer of assets to the Fund

as the Trustee determines.

#### **8.1A Trustee May Receive Splittable Contributions**

- (a) From 1 January 2006 where a Member of the Fund is the Spouse of another Member of the Fund or the Spouse of a member of another Superannuation Entity the Trustee may accept into the Fund on behalf of the Member the roll over (including internal roll over), transfer or allotment of a Contributions-Splitting ETP.
- (b) Unless the Trustee decides otherwise where the Fund receives a Contributions-Splitting ETP the Member receiving the Contributions-Splitting ETP must advise the Trustee of the extent to which the Contributions-Splitting ETP consists of:
  - (i) the taxed element of a post-June 1983 component;
  - (ii) undeducted contributions.

#### **8.2 Payment to another fund**

- (a) If a Member is, or is eligible to become, a member of another Superannuation Entity, the Trustee may pay to the Superannuation Entity all or any part of the Member's Member Account.
- (b) The payment may be made without the consent of the Member if Superannuation Law permits.
- (c) The payment may be made in cash or by the transfer of any assets of the Fund as the Trustee determines.
- (d) The Trustee may determine that any Taxes or expenses associated with the payment to the Superannuation Entity must be paid by the Member or deducted from the payment.
- (e) The receipt of the payment by the Superannuation Entity satisfies the Member's entitlement to benefits in respect of the amount paid. The Trustee is not responsible for the manner in which the payment is dealt with by the Superannuation Entity.

#### **8.3 Contributions Splitting**

##### **(a) Member application for contributions splitting**

From 1 July 2006 a Member of the Fund may in a financial year apply to the Trustee to roll over, transfer or allot some or all of the Members Splittable Contributions made by or in respect of the Member in the previous financial year to the Member's Spouse.

##### **(b) Acceptance of contributions splitting application**

The Trustee from 1 July 2006 may accept an application to roll over, transfer or allot Splittable Contributions if:

- (i) The Member has not already made an application in relation to the same financial year which has been given effect or is being considered by the Trustee;
- (ii) The amount of the Splittable Contributions to which the application relates does not exceed the Maximum Splittable Amount under the Superannuation Law;



(iii) The Member's Spouse is not:

- (A) Aged 65 years or more; or
- (B) Aged between their Preservation Age and 65 years and permanently Retired;

and the Spouse has provided a statement to the Trustee confirming either that they are aged less than their relevant Preservation Age or they are between their Preservation Age and 65 years and not permanently Retired.

- (C) The Trustee has no reason to believe that the Spouse statement in (iii) above is untrue.
- (D) The Member has specified in the application the amount of Taxed Splittable Contributions and Untaxed Splittable Contributions that the Member is seeking to split;
- (E) The amount of Untaxed Splittable Contributions specified in the application is less than or equal to the amount of undeducted contributions that would form part of an eligible termination payment if the Member withdrew their entire benefit at the time of the Trustee giving effect to the application;
- (F) The amount of Taxed Splittable Contributions specified in the application is less than or equal to the taxed element of the Post June 1983 component that would form part of an eligible termination payment if the Member withdrew their entire benefit at the time of the Trustee giving effect to the application;
- (G) The Splittable Contributions do not comprise part of a defined benefit component of a defined benefit interest in the Fund;
- (H) The Splittable Contributions are not subject to a family law payment split or payment flag.
- (I) Any fee decided by the Trustee to be charged to the Member to implement a transfer of Splittable Contributions has been paid.

**(c) Trustee conditions on Splitting Application**

Notwithstanding Clause 8.3(b) above the Trustee may accept a contributions splitting application in any circumstances permitted by the Superannuation Law or may impose such conditions as it decides on the acceptance of a contributions splitting application.

**(d) Time for implementing split**

If the Trustee accepts a contributions splitting application it will as soon as practicable and in any case within 90 days

after receiving the application or within such other time as the Superannuation Law permits, rollover, transfer or allot the relevant Splittable Contributions to the Member's Spouse.

**(e) Superannuation Regulator to be given statement**

If the Trustee accepts a contributions splitting application the Trustee shall give to the Superannuation Regulator the statement required by the Superannuation Law (if any) in relation to the resulting Contributions-Splitting ETP paid.

**(f) Trustee can reject application**

The Trustee has discretion to reject any contributions splitting application made by a Member without ascribing any reasons thereto.

**(g) Section 82AAT Notice must be given before application**

Except as otherwise provided by the Superannuation Law the Trustee cannot accept a notice provided by a Member under section 82AAT of the Income Tax Assessment Act in respect of contributions which are the subject of a contributions splitting application already lodged with the Trustee which has not been rejected.

**9. TRUSTEE**

**9.1 Constitutional Corporation**

The Trustee must be a Constitutional Corporation and an Approved Trustee in respect of the Fund.

**9.2 Covenants by trustee**

The Trustee covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise in relation to all matters affecting the Fund the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of members;
- (d) to keep the assets of the Fund separate from any money and assets that are held by the Trustee personally or that are money or assets of a Participating Employee;
- (e) not to enter into any contract or do anything else that would prevent the Trustee from or hinder the Trustee in properly performing or exercising the Trustee's functions and powers.

### 9.3 Discretions Absolute

The Trustee:

- (a) has an absolute and uncontrolled discretion in the exercise of its powers, authorities and discretions;
- (b) may exercise or refrain from exercising all or any of those powers, authorities and discretions at any time; and
- (c) is not bound to give to any person any reason for or explanation of its exercise, non-exercise or partial exercise of any such power.

### 9.4 Change of Trustee

A Trustee ceases to be the Trustee if:

- (a) the Trustee ceases to be eligible to act as trustee of the Fund under Superannuation Law;
- (b) the Members vote to remove the Trustee and Superannuation Law permits that removal;
- (c) the Superannuation Regulator removes or suspends the Trustee in accordance with the Superannuation Law; or
- (d) the Trustee retires after appointing its replacement.

### 9.5 Appointment of new Trustee

- (a) The appointment or retirement of a Trustee must comply with the Superannuation Law.
- (b) If the Members have voted to remove the Trustee as permitted by Superannuation Law then the new trustee will be the entity voted by the Members to replace the Trustee.
- (c) If the Superannuation Regulator removes or suspends the Trustee in accordance with the Superannuation Law then the Superannuation Regulator will appoint an acting trustee.
- (d) If the Trustee resigns from its office as trustee then the Trustee will appoint, by deed, a replacement trustee that has been nominated by Acclaim Management Group Limited ACN 091 082 058 ("AMG"). AMG's nominee must be a Constitutional Corporation and if required by Superannuation Law an Approved Trustee.

### 9.6 Vesting of Fund in New Trustee

A retiring Trustee must do all acts and execute all documents necessary to transfer the assets of the Fund to the new trustee. The retiring Trustee must deliver to the new trustee all books, documents, records and other property whatsoever relating to the Fund. The costs and expenses incidental to this are an Expense of the Fund.

### 9.7 Defects in Appointment

Any act of a new Trustee is valid despite any defect in the Trustee's appointment.

## 9.8 Covenants by new trustee

- (a) A new trustee must execute upon appointment a deed which provides that the new trustee undertakes to be bound by all the covenants and obligations on the part of the Trustee from the date of appointment.
- (b) From the date of appointment of a new trustee:
  - (i) the retiring trustee is absolved and released from all covenants and obligations under this Deed except for liability for any breach prior the new appointment;
  - (ii) the new trustee is entitled to exercise all the powers and rights and is subject to all the covenants and obligations, of the Trustee in all respects as if the new trustee had been originally named as a party to this Deed.

## 9.9 Indemnity to Trustee

- (a) Except as provided in **clause 9.9(b)**:
  - (i) the Trustee is not liable for any liability arising from its acts or omissions;
  - (ii) the liability of the Trustee is limited to the property for the time being comprised in the Assets of the Fund; and
  - (iii) the Trustee is entitled to be indemnified from the Assets of the Fund in respect of any liability incurred while acting as trustee.
- (b) **Clause 9.9(a)** does not apply to any liability for:
  - (i) a breach of trust where the Trustee:
    - (A) failed to act honestly in a matter concerning the Fund: or
    - (B) intentionally or recklessly failed to exercise the degree of care and diligence that the Trustee was required to exercise in relation to a matter affecting the Fund; or
  - (ii) a monetary penalty under a Civil Penalty Order.
- (c) Clauses **9.9(a)** and **(b)** extend to each of the following persons, if Superannuation Law permits, as if a reference to the Trustee was a reference to that person:
  - (i) a director, officer or employee of the Trustee acting in that capacity;
  - (ii) a director, officer or employee of a Participating Employer who is engaged in the administration or management of the Fund.

## 9.10 Trustee not liable for actions Trustee is obliged to perform

The Trustee is not liable to any person for:

- (a) doing or performing any act or thing which the Trustee is required to do or perform; or

- (b) failing to do or perform any act or thing which the Trustee is hindered, prevented or forbidden from doing or performing,

by any statutory provision or a decree, order or judgment of any court of competent jurisdiction.

#### **9.11 Director may be a Member**

- (a) A director, officer or Employee of the Trustee is not, subject to the Superannuation Law, by virtue of that person's office, or of powers being delegated by the Trustee to that person, disqualified from being a Member or from exercising any rights or deriving any benefits as a Member.
- (b) A director or other executive officeholder of a Participating Employer is not by virtue of that person's office, or of any powers being delegated by the Participating Employer to that person, disqualified from being a Member or from exercising any rights or deriving any benefits as a Member.

### **10. MANAGEMENT AND ADMINISTRATION**

#### **10.1 Powers of Trustee**

The Trustee may do anything which it considers necessary to administer the Fund and to comply with Superannuation Law including:

- (a) purchasing plant, equipment and fittings;
- (b) leasing and accepting surrenders of leases (or agreeing so to do) with power to compromise with lessees and others;
- (c) conducting and settling legal proceedings;
- (d) settling, compromising or submitting to arbitration any claims relating to the Fund or the Trustee;
- (e) developing, improving, subdividing, repairing, managing and otherwise dealing with any investment;
- (f) borrowing and giving security for that borrowing over any of those assets of the Fund in accordance with Superannuation Law;
- (g) insuring any risks permitted by the Superannuation Law;
- (h) electing to be bound by legislation; and
- (i) doing such other things as may appear to the Trustee to be incidental to any or all of the above powers.

#### **10.2 Delegation of Trustee powers**

- (a) The Trustee may delegate any functions, authorities, discretions or powers exercisable by the Trustee (including a power which the Trustee has a duty to exercise) to any person upon such terms and conditions as it determines.
- (b) The Trustee is not liable or responsible for any act or omission, error of judgment, negligence or breach of trust of a delegate.
- (c) The Trustee may:

- (i) revoke any delegations;
- (ii) exercise any delegated function, authority, discretion or power itself concurrently with or to the permanent or temporary exclusion of a delegate.

### 10.3 Appointment of service providers

- (a) The Trustee may:
  - (i) appoint in writing on such terms as it determines a person ("**Administrator**") to administer the Fund;
  - (ii) delegate to an Administrator such matters as it determines from time to time related to the administration of the Fund.
- (b) The Trustee may:
  - (i) appoint in writing on such terms as it determines a person ("**Manager**") to manage the Fund;
  - (ii) delegate to a Manager such matters as it determines from time to time related to the management of the Fund.
- (c) The Trustee may:
  - (i) appoint on such terms as it determines one or more bodies corporate ("**Investment Managers**") to manage the investments of the Fund or any part of the Fund;
  - (ii) only appoint an Investment Manager if the following conditions are satisfied:
    - (A) the appointment is in writing;
    - (B) the Investment Manager is eligible under the Superannuation Law to be appointed to act;
    - (C) the terms of the appointment comply with any applicable Superannuation Law.
- (d) The Trustee may:
  - (i) appoint in writing on such terms as it determines any person eligible for appointment in accordance with Superannuation Law as a custodian ("**Custodian**"), to receive, hold and retain registration of any of the assets of the Fund (whether or not those assets are located in Australia).
  - (ii) by the terms of appointment of a Custodian, allow the Custodian to appoint and remove agents or sub-Custodians to carry out the Custodian's duties or any of those duties.
- (e) The Trustee may engage accountants, actuaries, asset consultants, bankers, barristers, solicitors, brokers, consultants, valuers, claims assessors, medical practitioners and such other professional advisers from time to time, to give such advice, as the Trustee determines.

- (f) Subject to clause 9.9:
- (i) the Trustee is not liable for the neglect, default or misconduct of any person appointed or engaged by it, nor for allowing trust funds or securities to remain in the custody or control of any person so appointed or engaged for any time; and
  - (ii) the Trustee is not bound to take proceedings against any such person.

#### 10.4 **Reliance on advice**

The Trustee may act on the advice or opinion of any accountant, actuary, asset consultant, banker, barrister, solicitor, broker, consultant, valuer, claims assessor, medical practitioner or other professional person and, subject to **clause 9.9**, the Trustee is not responsible for any loss occasioned by acting on this advice.

#### 10.5 **Remuneration of Delegates and Advisers**

The Trustee may pay from the Fund, as an Expense, such remuneration as it determines to any delegate appointed by it or adviser engaged by it.

#### 10.6 **Remuneration of Trustee**

The Trustee is entitled to pay itself from the Fund from time to time a reasonable remuneration for its services as trustee.

#### 10.7 **Exercise of Discretion**

Any exercise by the Trustee of any power, discretion or authority of the Trustee may be made by a resolution of the corporation or by a resolution of its board of directors or other governing body.

#### 10.8 **Disputes**

The Trustee must establish such procedures to deal with enquiries and complaints in relation to the Fund by Members and other persons as it determines necessary to comply with Superannuation Law.

#### 10.9 **Policy Committees**

The Trustee must take all reasonable steps to ensure that policy committees are established as required under the Superannuation Law and that:

- (a) the composition of each policy committee and the manner in which its members are appointed retired and removed complies with Superannuation Law;
- (b) the functions of each policy committee comply with Superannuation Law;
- (c) so far as practicable, each policy committee meets at least once in any financial year;
- (d) facilities reasonably necessary to enable each policy committee to meet and function effectively are provided; and
- (e) a representative of the Trustee is available to attend each meeting of a policy committee where the policy committee requests the Trustee to do so.

#### 10.10 Proofs and presumptions

When determining questions of fact, the Trustee may act upon any proofs or presumptions it considers appropriate, whether or not they are strictly legal proofs or presumptions.

#### 10.11 Temporary Resident Benefits

The Trustee shall act in accordance with notices issued by the Regulator regarding the unclaimed superannuation benefit of temporary residents.

### 11. INVESTMENT AND BORROWING

#### 11.1 Investment

The Trustee must set investment objectives for the Fund and formulate an investment strategy to achieve those objectives having regard to the whole of the circumstances of the Fund including, but not limited to, the matters prescribed under Superannuation Law.

#### 11.2 Investment directions from Member

Despite **clause 11.1**, the Trustee may:

- (a) set different investment objectives for 2 or more Investment Portfolios;
- (b) formulate an investment strategy for each Investment Portfolio which is designed to achieve the investment objectives of the Investment Portfolio;
- (c) divide the Assets of the Fund between the different Investment Portfolios consistent with the investment strategy for each Investment Portfolio;
- (d) invite Members to nominate one or more Investment Portfolios for the investment of the whole or any part of their Contribution Account and future contributions;
- (e) set rules regarding:
  - (i) when, how and in what manner Members may change their nominations;
  - (ii) the minimum amount that may be invested in an Investment Portfolio; and
  - (iii) any other matters which the Trustee considers appropriate;
- (f) change the investment objectives, strategies, Investment Portfolios and the Assets of the Fund which comprise the Investment Portfolios as the Trustee determines.

#### 11.3 Authorised Investments

The Trustee may invest in the following Authorised Investments:

- (a) any investment in which by the laws of Queensland or any State or Territory of Australia trustees are authorised to invest;



- (b) moneys deposited (whether for a term or at call) with any financial institution (with or without interest) or with any person, including short term money market investments;
- (c) stock, bonds, shares, notes, options, debentures, loan securities or any other securities of any corporation or securities of any government, semi-governmental body or public authority, whether in Australia or any other country, and whether or not listed on a securities exchange in Australia or any other country;
- (d) Commodities;
- (e) the purchase, lease or other acquisition of real property and any improvements, fixtures and fittings erected or installed or to be erected or installed, or rights conferring options, rights of first refusal or otherwise relating to the acquisition of real property;
- (f) the purchase, lease, hire or other acquisition of any personal property and any share or estate or interest in personal property;
- (g) units or sub-units or other rights or interests (however described) in any trust, managed investment scheme or other mutual or common fund or pooled superannuation trust;
- (h) bills of exchange, promissory notes and other negotiable instruments whether purchased or discounted which have been either drawn, issued, endorsed or accepted by a corporation;
- (i) any Derivative including but not limited to any one or more of:
  - (i) a futures contract;
  - (ii) a currency futures contract;
  - (iii) a swap, cap, floor or collar;
  - (iv) a swaption;
  - (v) a spot or forward foreign exchange agreement;
  - (vi) an option; or
  - (vii) options over any of the above Derivatives;

whether or not entered into or acquired for the purpose of hedging against or minimising any Loss concerning Authorised Investments held by the Trustee
- (j) Insurance Investments;
- (k) the investment of money on security (by way of a registrable or registered first mortgage) of any real property;
- (l) discounting of loans, mortgages or leases;
- (m) the purchase of a secondary mortgage market security;

- (n) RITS in respect of investments mentioned elsewhere in this definition and included in RITS;
- (o) Repos;
- (p) Index Linked Securities;
- (q) and otherwise, subject to the provisions of Superannuation Law and provided the investment is made on an arm's length basis, the Trustee may invest the whole or any part of the moneys or assets of the Fund in any investment of any kind which the Trustee, in exercising its absolute discretion, determines.

#### 11.4 Underwriting of Authorised Investments

The Trustee may:

- (a) underwrite or sub-underwrite, or join with others in underwriting or sub-underwriting, the subscription of any Authorised Investment;
- (b) delegate to any Investment Manager general authority to enter into and carry out underwriting or sub-underwriting agreements and the like, whether for the Fund alone or for the Fund in conjunction with other funds and institutions.

#### 11.5 Borrowing

- (a) Subject to clause **11.5(b)**, the Trustee may borrow any sum or sums of money, whether with or without security, on such terms and conditions in all respects as it determines, and in particular may draw, accept, endorse, discount and issue promissory notes, bills of exchange and other negotiable or transferable instruments without any qualification as to bank acceptance or otherwise.
- (b) The Trustee shall not borrow otherwise than as permitted under Superannuation Law.

#### 11.6 Dealings with Members

The Trustee must not:

- (a) lend money of the Fund, or give any other financial assistance using the resources of the Fund, to any Member or an associate of any Member;
- (b) intentionally acquire an asset from a Member, or an associate of a Member,

except as permitted under Superannuation Law.

#### 11.7 Loans to Participating Employers

The Trustee must not lend any moneys of the Fund to, or invest any moneys of the Fund in, any Participating Employer or an associate of a Participating Employer, except to the extent that the loan or investment complies with the restrictions on the in-house assets prescribed by the Superannuation Law.

## **11.8 Arm's length**

The Trustee must not make any investment unless:

- (a) the Trustee and the other party to the investment are dealing with each other at arm's length; or
- (b) where the investment is not at arm's length, it complies with Superannuation Law.

## **11.9 Registration in name of nominee or custodian trustee**

The title to any property forming part of the Fund may be registered in the name of a custodian, nominee or other delegate of the Trustee.

## **12. INSURANCE**

### **12.1 Power to insure**

The Trustee has the power to effect or take out at the expense of the Fund from time to time one or more policies of insurance with one or more insurance companies in regard to the Fund and to continue or renew or arrange for the continuance or renewal of all or any of such policies for such period as the Trustee thinks fit. The Trustee may also agree from time to time with the insurance company concerned for any policy to be varied

### **12.2 Terms of policy of insurance**

A policy of insurance shall be on such terms and conditions as may be approved by the Trustee and the Trustee must pay all premiums, and receive from the insurance company all payments, refunds and other moneys, in respect of the policy of insurance and account for those moneys so received in accordance with this Deed.

### **12.3 Where Insurance not available**

If at any time:

- (a) the Trustee is of the opinion that it is not reasonably practicable to obtain life insurance or an increase in life insurance or to maintain life insurance in respect of a Member under a policy of insurance on terms acceptable to the Trustee; or
- (b) pursuant to the policy of insurance, the insurance company for any reason whatsoever fails to provide or increase, or reduces, terminates or withholds life insurance in respect of a Member or refuses to admit a claim for the whole or part of the life insurance effected in respect of the Member,

any benefit payable to or in respect of the Member pursuant to this Deed shall be reduced to the extent that life insurance is not obtained, increased or maintained or is not provided or increased or is reduced or terminated or that claim is not admitted in respect of the Member or where life insurance is withheld, will be adjusted accordingly.

### **13. EXPENSES AND CHARGES**

#### **13.1 Expenses**

The Expenses of the Fund comprise such of the following costs, charges and expenses as are reasonably and properly incurred in or about the administration of the Fund:

- (a) the costs of establishing the Fund including the costs of the preparation and stamping of this Deed, and such other costs as the Trustee determines have been reasonably incurred in establishing the Fund;
- (b) the costs of keeping and auditing the books of account required by this Deed;
- (c) the costs of establishing and maintaining any registers;
- (d) disbursements in connection with the acquisition, sale, collection, maintenance, distribution of or other dealing with any Authorised Investment including legal fees, consultant fees, stamp duties, brokerage and commission;
- (e) without limiting paragraph (d), expenses incurred by the Trustee in ascertaining, examining and satisfying itself from time to time in connection with the attempted or proposed acquisition or disposal of, or on the suitability of possible Authorised Investments;
- (f) the costs of acquiring, establishing and developing computer hardware and software systems required for the administration of the Fund;
- (g) the fees and disbursements payable to any managing agents or collection agents not exceeding the prevailing commercial rates chargeable by managing agents or collection agents for services performed by them;
- (h) fees payable to any Administrator, Manager, Investment Manager, Custodian, consultant or any other delegate or adviser;
- (i) advertising expenses relating to the sale of property;
- (j) fees and charges imposed by financial institutions, and duties, levies and other imposts imposed by governments or governmental bodies in relation to financial transactions;
- (k) fees payable to and expenses in connection with any dealing with, the Superannuation Regulator or other government entity;
- (l) stamp duties and similar imposts;
- (m) costs of preparing, printing and issuing of confirmations, accounts, other statements, taxation information, cheques, notice or any other document or report sent to Members or Participating Employers in accordance with the provisions of this Deed or the Superannuation Law;
- (n) costs of postage of all cheques, accounts, notices and other documents posted to Participating Employers, Members;
- (o) disbursements and costs incurred by or on behalf of the Trustee or in connection with the retirement of the Trustee under this Deed and the appointment of a new trustee and anything ancillary or incidental to such

retirement or appointment;

- (p) except where the court otherwise directs, disbursements and costs by or on behalf of the Trustee in or in connection with the initiation, carriage and settlement of any court proceedings (including any negotiations and demands relating to any such proceedings) arising in respect of the operation of the Fund;
- (q) costs and disbursements incurred in amending the Deed;
- (r) all rates, taxes, charges, surcharges, assessments and impositions whatsoever (whether parliamentary, municipal or otherwise and whether assessed, charged or imposed by or under Federal or State law or by Federal, State or Local Authorities and whether on a capital or revenue value or any other basis and even though of a novel character) which are assessed, charged or imposed (or the Trustee determines may be assessed, charged or imposed) in respect of the Fund, any part of the Fund or the provision of any goods and services to the Fund;
- (s) costs of the preparation and lodgment of any statutory returns;
- (t) any remuneration payable to the Trustee;
- (u) the cost of premiums payable under any policy of insurance effected by the Trustee for the purpose of indemnifying the Trustee or its directors against any personal liability that any of them may incur in the administration or investment of the Fund;
- (v) costs of preparing, printing, lodging and issuing any brochures or Offer Document advertising the Fund and otherwise incurred in marketing and advertising the Fund including, without limitation, legal, accounting, consulting and other fees;
- (w) costs of establishing and maintaining policy committees as required under **clause 10.9**;
- (x) any other disbursements properly incurred in the administration of the Fund.

### 13.2 **Payment of Expenses**

- (a) The Trustee may pay (or reimburse itself or any other party for) any Expenses from the Fund's assets.
- (b) The Trustee may account for the Expenses paid or payable from the Fund by:
  - (i) deducting any Expenses from income of the Fund which has not been allocated;
  - (ii) debiting the Reserve Account;
  - (iii) debiting amounts from Retirement Credits,

as determined by it from time to time, for Expenses generally or for any particular Expense or class of Expenses.

### 13.3 **Charges**

- (a) The Trustee may in its discretion from time to time levy charges for entry into

the Fund, exit from the Fund, the administration of the Fund, the switching of investment strategies or for any other purpose determined by the Trustee.

- (b) Any charges levied may be applied, as determined by the Trustee:
  - (i) as remuneration of the Trustee;
  - (ii) to cover any Expense (partly or wholly).

## **14. RECORDS, ACCOUNTS AND AUDIT**

### **14.1 Records**

The Trustee must keep or cause to be kept, including (but not limited to):

- (a) a complete record of all Members containing all the information which is necessary to administer the Fund;
- (b) accounting records which correctly record and explain the transactions and financial position of the Fund;
- (c) minutes of all meetings of directors of the Trustee;
- (d) changes of Trustee or the directors of the Trustee;
- (e) reports to Members; and
- (f) entry and withdrawal of Members.

### **14.2 Accounting Records**

The Trustee must:

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the Fund;
- (b) keep the accounting records so as to enable:
  - (i) the preparation of accounts, statements and returns of the Fund as prescribed by Superannuation Law;
  - (ii) the accounts, statements and returns to be conveniently and properly audited.

### **14.3 Accounts**

The Trustee must:

- (a) prepare such accounts, statements and returns of the Fund as are required by Superannuation Law;
- (b) make such arrangements as are necessary to enable those accounts to be audited.

### **14.4 Audit**

- (a) The Trustee must from time to time appoint an Auditor to audit the accounts and statements of the Fund.

- (b) The Trustee must ensure that, for each Financial Year, the Auditor audits the accounts and statements of the Fund and reports in writing to the Trustee within the time specified in the Superannuation Law.
- (c) The Trustee shall fix the remuneration of the Auditor, and that remuneration is payable as an Expense.
- (d) The Trustee may at any time remove an Auditor from office.
- (e) The Auditor may retire from office on 1 Month's notice to the Trustee, but must not retire within a period of 3 Months before or after the end of a Financial Year without the consent of the Trustee.

#### **14.5 Auditor's access**

The Trustee must allow the Auditor access at all reasonable times to all the books and records under the Trustee's control, and give to the Auditor such information and explanations as the Auditor requires for the performance of the Auditor's duties.

#### **14.6 Information for Members**

The Trustee must provide such information to Members and Participating Employers in relation to the records and accounts of the Fund as is prescribed as Superannuation Law.

### **15. TERMINATION OF THE FUND**

#### **15.1 Termination by Trustee**

The Trustee may terminate the Fund with effect from a date the Trustee determines.

#### **15.2 Notice of termination**

If the Trustee resolves to terminate the Fund, the Trustee must give notice in writing to that effect to the Participating Employers and the Members.

#### **15.3 Contributions on termination**

From the Termination Date, the Trustee must not accept contributions from any Employer or Member, other than arrears of contributions.

#### **15.4 Distribution**

As soon as practicable after the Termination Date, the Trustee must:

- (a) pay any outstanding liabilities of the Fund excluding benefits;
- (b) provide for any anticipated liabilities of the Fund excluding benefits;
- (c) pay the following amounts in the following order of priority;
  - (i) benefits which became payable on or before the Termination Date;
  - (ii) benefits for each Member who attained age 65 on or before the Termination Date and who has not Retired, equal to the balance in the Member's Member Account; and
  - (iii) benefits for each Member who has not attained age 65 and has

not Retired, equal to the credit in the Member's Member Account.

**15.5 Deceased Member**

If a Member dies before receiving a benefit under **clause 15.4(c)**, the benefit must be paid in accordance with **clause 7.3**.

**15.6 Surplus on termination**

If after making the payments provided for in **clause 15.4** a surplus remains in the Fund, the Trustee may distribute the surplus to or for the benefit of any of the following persons, in proportions determined by the Trustee:

- (a) any Members or former Members;
- (b) any Dependants of a Member or former Member;
- (c) the Legal Personal Representative of any Member, former Member or Dependant;
- (d) any Participating Employer or former Participating Employer.

**15.7 Payments**

- (a) A benefit payable under this **clause 15** must be paid in accordance with **clause 7**.
- (b) A payment to a Participating Employer may be made in cash or by transfer of Assets of the Fund.

**16. AMENDMENT OF DEED**

**16.1 Permitted Amendments**

The Trustee may at any time amend all or any of the provisions of this Deed (including this clause), to take effect from a date before or after the date of the amendment, provided that the amendment must not:

- (a) permit the appointment of a person other than a Constitutional Corporation as trustee unless the Superannuation Law permits; or
- (b) adversely affect a Member's right or claim to accrued benefits, or the amount of those accrued benefits, unless it is consistent with Superannuation Law.

**16.2 Amendments**

Notwithstanding **clause 16.1**, the Trustee may, subject to the consent of the Superannuation Regulator, amend this Deed in order to comply with Superannuation Law.

**16.3 Date of effect**

An amendment may take effect from a date before or after it is made.

**16.4 Form of amendment**

An amendment may be made by deed or a written or oral resolution of the Trustee.



## 16.5 Notice to Members

The Trustee must notify each Participating Employer and Member of every amendment in accordance with Superannuation Law. A failure to comply with this requirement does not however render the amendment void, voidable or unenforceable.

## 17. GENERAL PROVISIONS

### 17.1 Notices

- (a) Any notice which is required to be or which may be given to any Participating Employer or Member may be delivered to the Participating Employer or Member personally or sent through the post addressed to the Participating Employer or Member at the address according to the records of the Trustee.
- (b) If sent by post a notice is deemed to have been delivered on the day following the posting of the notice.

### 17.2 Governing Law

- (a) All matters arising in relation to this Deed and the interpretation thereof shall be governed by the law of the State of Victoria ("**Governing Law**") provided that in the event of a conflict between the Superannuation Law and a law of the State of Victoria, the Superannuation Law will prevail.
- (b) This Deed is to be interpreted so that it complies with the Governing Law. If any provision of this Deed does not comply with such law then the provision must be read down to give effect to the provision as far as possible. If it is not possible to give effect to the provision then it shall be deemed to be severed from the rest of the Deed.

### 17.3 Workers' Compensation not affected

- (a) Nothing in this Deed in any way affects the right of a Member or Legal Personal Representative or other person to claim damages or compensation for any accident arising out of and in the course of a Member's employment or payment for long service leave.
- (b) An amount payable under this Deed shall not be reduced by reason of any payment that may be made in respect of damages or compensation or for sick leave, but this **clause 17.3(b)** does not affect the terms of any Policy of Insurance under which a benefit is payable.

### 17.4 Severance

- (a) If any provision of this Deed is void or voidable or unenforceable or illegal, but would not be void or voidable or unenforceable or illegal if it were read-down and it is capable of being read-down, it shall be read-down accordingly.
- (b) If notwithstanding **clause 17.4(a)**, a provision of this Deed is void or voidable or unenforceable or illegal:
  - (i) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were

omitted, that word or those words are hereby severed; and  
(ii) in any other case, the whole provision is hereby severed,  
and the remainder of this Deed has full force and effect.