

Deed of Amendment for Avenue Superannuation Plan

Macquarie Investment Management Limited

Ebsworth & | **Ebsworth** LAWYERS

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Deed dated 1ST JULY 2007

between **Macquarie Investment Management Limited** (ACN 002 867 003)
of Level 27, 20 Bond Street, Sydney, New South Wales, 2000 (**Trustee**)

Recitals

- A. By trust deed executed on # 2006 (as amended) (**Trust Deed**) the Trustee established the Avenue Superannuation Plan (**Fund**).
- B. The Fund commenced on # 2006.
- C. The Trustee is the present trustee of the Fund.
- D. Pursuant to Clause 15 of the Trust Deed, the Trustee may by deed vary the Trust Deed, subject to a number of restrictions set down in Clause 15.
- E. The Trustee is of the opinion that the amendments made by this Deed may be made in accordance with Clause 15 of the Trust Deed.

Operative Provisions

1. The Trust Deed is amended by:
 - (a) deleting the words and characters which have been marked with lines which delete them; and
 - (b) adding the words and characters which have been marked up with underlining;on the attached copy of the consolidated Trust Deed. The Fund continues subject to the provisions of this Deed and nothing in this Deed terminates or is deemed to have terminated the Fund or creates or is deemed to have created a new trust.
2. For the avoidance of doubt, this Deed does not:
 - (a) add any of the words and characters that are underlined in the attached copy of the consolidated Trust Deed that were underlined in the Trust Deed immediately prior to execution of this Deed;
 - (b) amend any of the provisions of the Trust Deed except those amended by making the additions and deletions under Clause 1.
3. The amendments are effective from the date of this Deed.
4. If any provision inserted in the Trust Deed by this Deed is void or ineffective by operation of law, or declared void by any Court of competent jurisdiction, such avoidance or ineffectiveness does not affect the operation of the remaining provisions of the Trust Deed, to the extent that the ineffective or void provisions can be severed from those provisions.
5. This Deed is governed by and interpreted in accordance with the law of New South Wales.

Executed as a deed.

THE COMMON SEAL OF ~~MACQUARIE~~
~~INVESTMENT MANAGEMENT~~ LIMITED
WAS HEREUNTO AFFIXED IN ACCORDANCE
WITH THE COMPANY'S CONSTITUTION:

~~Executed by Macquarie Investment
Management Limited (ACN 002 867 003)
in accordance with its Constitution:~~

63/07



[Signature]
Signature of Authorised Person

[Signature]
Signature of Authorised Person

Dennis Leong
Print name

Neil Roderick
Print name

COMPANY SECRETARY
Office held

Executive Director
Office held

AVENUE SUPERANNUATION PLAN

TRUST DEED
AND RULES OF FUND

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THIS DEED is made on the day of 2006

BY: MACQUARIE INVESTMENT MANAGEMENT LIMITED
(ACN 002 867 003) having its registered office at Level 27, 20 Bond Street, Sydney in the State of New South Wales ("the Trustee").

WHEREAS:

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

WITNESSES:

1. The Fund shall be named the Avenue Superannuation Plan.
2. The Fund shall come into operation on the day of 2006 (the "Commencing Date").
3. The "Rules" means the Rules scheduled to this Deed, as amended from time to time, which shall have effect as if set out in this Deed.
4. The Trustee may from the Commencing Date accept contributions to the Fund and all the assets of the Fund from time to time shall be vested in the Trustee upon trust to apply the same in the manner set forth in the Rules.
5. The Fund shall be managed and administered in all respects according to the Rules.
6. The first Trustee shall continue as Trustee until a substitute Trustee is appointed in accordance with the Rules. The Trustee of the Fund from time to time shall be appointed and may resign or be removed in accordance with the Rules.
7. The provisions of this Deed may be amended in the manner set out in the Rules.
8. This Deed and the Rules shall be governed by and construed in accordance with the law of New South Wales.

EXECUTED AS A DEED

**EXECUTED by MACQUARIE INVESTMENT)
MANAGEMENT LIMITED in accordance with)
s127 of the Corporations Act 2001 (Cth);)
)**

Signature of Secretary

Signature of Director

Print name of signatory

Print name of signatory

AVENUE SUPERANNUATION PLAN

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RULES OF THE AVENUE SUPERANNUATION PLAN

1. INTERPRETATION

1.1 Definitions

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

"Actuary" means an Actuary, whose accreditation is acceptable for the purposes of the Relevant Law, who is for the time being appointed by the Trustee for the purposes of the Rules.

"Administration Agreement" means the agreement entered into between MIML and the Nominator on or around the date of this Deed.

"Allocated Pension" means a pension under which the Beneficiary has the right to receive regular income payments to be made by the Trustee to the Beneficiary from that Beneficiary's Allocated Pension Account maintained by the Trustee in the Division. Subject to the pension complying with the Relevant Law, the regular payments are determined on the basis agreed between the Trustee and the Beneficiary from time to time and continue until the account is exhausted.

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

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

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

"Beneficiary" means a person presently beneficially entitled to receive a Benefit from a Division. To avoid doubt, a Member of a Division may also be a Beneficiary of that Division.

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

"Benefit Direction" in respect of a Beneficiary, means a written notice received by the Trustee from the Beneficiary which:

- (a) was given to the Trustee by the Beneficiary prior to the Beneficiary commencing to receive a pension from the Fund;
- (b) is in a form approved by the Trustee;
- (c) has effect from the date the Beneficiary commences to receive a pension from the Fund; and
- (d) directs the Trustee, on the death of the Beneficiary, to pay a pension to a Dependant of the Beneficiary.

To avoid doubt, the written notice may request that the pension to be paid is not to be commuted after the death of the Beneficiary who gives the notice. If the Trustee consents to that request, the pension must not be commuted after the death of the Beneficiary who gives the notice.

"Child" includes a step-child, an ex-nuptial child, a legally adopted child, a posthumous natural child and a person recognised by the Trustee as an adopted child.

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

"Corporations Act" means Chapter 7 of the Corporations Act, 2001 and any regulations made or issued under Chapter 7.

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

- (a) for a Member:
 - (i) the Member's Division Credit for each Division; plus
 - (ii) any Insured Benefit payable to the Fund on the Member's death;
- (b) for a Beneficiary who is not a Member:
 - (i) the Beneficiary's Allocated Pension Account balance or Allocated Pension Account balances; plus
 - (ii) the Beneficiary's Term Allocated Pension Account balance or Term Allocated Pension Account balances; plus
 - (iii) any Insured Benefit payable to the Fund on the Beneficiary's death;
- (c) for a Member or Beneficiary who was receiving a pension or pensions from the Fund (Allocated Pensions and Term Allocated Pensions not to be counted for this purpose) when he or she died, the amount payable on the death of the Member or Beneficiary in accordance with the terms of the pension or pensions.

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

"Dependant" in relation to a Member or Beneficiary includes a Spouse and Child of the Member or Beneficiary, and any other person who in the opinion of the Trustee is or was at the relevant time wholly or partially dependent on the Member or Beneficiary for maintenance and support or who is taken to be a dependant under the Relevant Law.

"Division" means the Avenue Superannuation Division and any other Division the Trustee resolves, with the consent of the Nominator, to establish. To avoid doubt, a person may be a Member of more than one Division, a Beneficiary of more than one Division and a Member of one Division and a Beneficiary of another Division.

"Division Credit" means in relation to a Member, the total value of the Member's Accounts for the Division.

"Division Membership" means in relation to a Member, the period of employment with the Employer during which the Member has contributed to the Division, or the Employer has contributed to the Division on behalf of the Member PROVIDED that the Employer may nominate some other basis to determine Division Membership in the Participation Agreement.

"Employer" means a Participating Employer and, in relation to a particular Member or former Member, means the Employer in whose employment that person is or was at the relevant time.

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

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

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

"Fund" means the superannuation fund established pursuant to the Deed, and all its assets, to be known as the Avenue Superannuation Plan, including the Divisions.

"Fund Year" means a period of twelve months ending on 30 June each year or such other date as the Trustee may determine from time to time.

"Hub Strategy" means, for the purposes of Schedule 1, the investment strategy specified by the Trustee in Clause A1.6(c).

"Individual Member" means a person who is admitted as a Member of a Division under Clause 2.2.

"Insured Benefits" means in relation to a Member or Beneficiary, those benefits in a Division, including the provision of a pension, which the Trustee has secured by way of life insurance in the event of a Member's or Beneficiary's death or Total and Permanent Disablement or income protection insurance in respect of a Member or Beneficiary, but does not include benefits which the Trustee has secured under an investment account contract or investment linked contract as defined in the Life Insurance Act 1995.

"Life Insurance Policy" means a life insurance contract or contract of income protection insurance owned by the Trustee and issued on the life of a Member or group of Members.

"Member" means any person who has been admitted as a Member of a Division pursuant to Section 2. To avoid doubt, a Beneficiary of a Division may also be a Member of the Division, but is not necessarily a Member of the Division.

"Member's Accounts" means the accounts kept in respect of each Member pursuant to the Schedule applicable to the Division.

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

"MIML" means Macquarie Investment Management Limited.

"Nominator" means Avenue Capital Management Ltd.

"Non-lapsing Nomination" in respect of a Member or Beneficiary, means a written notice received by the Trustee from the Member or Beneficiary under Clause 6.3.3 which:

- (a) is in a form approved by the Trustee and meets any requirements determined from time to time by the Trustee for such Nominations;
- (b) is clear on its face that it is not intended to lapse at the end of any fixed period of time;
- (c) confirms a previous Non-lapsing Nomination or makes a new nomination in respect of the Death Benefit payable on the Member's or Beneficiary's death, the nominee or each nominee (if more than one) to be a Dependant or the Personal Representative of the Member or Beneficiary;
- (d) is intended by the Member or Beneficiary to be binding on the Trustee if the Trustee gives its consent in accordance with Clause 6.3.CB;
- (e) can be revoked or amended by the Member or Beneficiary at any time, in a form approved by the Trustee; and
- (f) the Trustee has given its consent in accordance with Clause 6.3.4.

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

- (g) specify the proportions payable to each nominee (if there are more than one) and the form of the payment or payments;
- (h) provide that a nominee who does not satisfy a specified contingency will not have an entitlement and another nominee will take that entitlement instead;
- (i) provide that in the event of the death of a nominee who receives his or her entitlement as an Allocated Pension, Term Allocated Pension or a pension, the residue (if any) is to be paid to a

person or persons (who, if required by the Relevant Law, must be Dependants of a particular deceased Member), whether such a person is named, is otherwise identifiable or is to be determined by the Trustee in its discretion in accordance with the Non-lapsing Nomination;

- (j) specify that a Death Benefit payable as an Allocated Pension, Term Allocated Pension or pension is not commutable;
- (k) specify or provide for anything else;

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

"Normal Retirement Date" means in relation to a Member, the date on which the Member attains 65 years of age or such other age, acceptable under the Relevant Law, nominated in the Participation Agreement.

"Participation Agreement", for the purposes of a Division, means:

- (a) in relation to an Employer and those Members who are employed by that Employer, the agreement between the Employer and the Trustee covering the following:
 - (i) contributions to be paid to the Division by the Employer;
 - (ii) contributions to the Division (if any) to be paid by the Members employed by the Employer;
 - (iii) the investment selection pursuant to the Schedule applicable to the Division;
 - (iv) the Benefits to be provided under the Division in respect of those Members; or
- (b) in relation to an Individual Member, the application made by the Individual Member to the Trustee specifying:
 - (i) contributions payable to the Division by the Individual Member or any person in respect of the Individual Member;
 - (ii) the Member's investment selection pursuant to the Schedule applicable to the Division;
 - (iii) the Benefits to be provided under the Division in respect of such Member as varied by the parties from time to time; and
 - (iv) such other matters as the Trustee determines.

"Participating Employer" means any company, partnership or person which the Trustee has approved to participate in a Division as an Employer.

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

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

"Relevant Law" means:

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

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

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

"Retrenchment" means, in the opinion of the Trustee whose decision shall be final, the termination of a Member's employment with the Employer by reason of the reduction or re-organisation of labour, or because the position in which the Member is employed is no longer necessary, and the Member is not offered similar employment with any organisation associated with the Employer.

"Rules" means these Rules, as altered or amended from time to time.

"Schedule" means Schedule 1 or any other schedule as the context requires.

"Section" means a Clause or group of Clauses in the Rules identified by the same initial number.

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

"Spouse" includes a de facto spouse who lives with the Member on a bona fide domestic basis as the husband or wife of the Member and the widow, widower or surviving de facto spouse of a Member.

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

"Term Allocated Pension" means a pension under which the Beneficiary has the right to receive regular income payments for the applicable term, to be made by the Trustee to the Beneficiary from that Beneficiary's Term Allocated Pension Account maintained by the Trustee in the Division. Despite any other provisions of this Deed, the pension must comply with the standards for a market linked pension under sub regulation 1.06(8) and regulation 1.07C of SIS and, unless agreed otherwise by the Trustee and the Beneficiary, any other regulatory requirement in order for the pension to be taken as complying for reasonable benefit limit and social security asset test purposes. Subject to complying with those standards, the pension may have such other features as are agreed by the Trustee and the Beneficiary, the regular payments are determined on the basis agreed between the Trustee and the Beneficiary from time to time and continue until the account is exhausted, and the pension may be commuted (in whole or part) if requested by the Beneficiary and agreed to by the Trustee.

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

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

- (a) to the extent that the Trustee is entitled to claim under a policy of insurance which the Trustee has effected to provide a benefit on the total and permanent disablement of the Member, the definition of "total and permanent disablement" in that policy; and
- (b) in the absence of any relevant insurance, the disablement of a Member to the extent that the Member is, in the opinion of the Trustee, formed after obtaining certification from two registered medical practitioners, unlikely ever to be able to work in a job for which the Member is reasonably qualified by education, training or experience.

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

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

1.2 *General*

(a) Plural and gender of words

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

(b) Headings

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

(c) Defined Words

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

(d) Statutory Enactments

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

(e) Reference to person

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

2. PARTICIPATION

2.1 *Participating Employer*

- (a) The Trustee may in its discretion admit a Participating Employer to participate in a Division on the terms agreed in the Participation Agreement. A Participating Employer so admitted shall agree to be bound by the Rules.
- (b) Employees of a Participating Employer are eligible to be admitted as Members of a Division by the Trustee with such entitlements as to Benefits and on such terms as to contributions by the Member and/or by the Employer in respect of the Member, as are specified in the Participation Agreement.

2.2 *Individual Members*

The Trustee may in its discretion admit a person the Trustee can admit to membership of a Division in accordance with the Relevant Law. Before admitting a person to membership, if it so determines the Trustee may require the person (or another person on that person's behalf) to make application for membership on the terms specified in the Participation Agreement. To avoid doubt but subject to the Relevant Law, where a person is to be admitted to membership of a Division by virtue of being a non-

member spouse who is entitled to a payment split under the Family Law Act, such admission to membership is contingent on the person making such application or meeting such other requirements as the Trustee determines.

2.3 Information

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

2.4 Conditions

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

2.5 Cessation of Membership

Membership of a Division ceases on:

- (a) payment in full of the Benefit under the Division to or in respect of the Member; or
- (b) transfer of the Member's entire interest in the Division under Clause 2.8 or Clause 11.2, whichever occurs first.

2.6 Notice to Applicants and New Members

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

2.7 Employment Relationship

Nothing in these Rules shall affect the powers or rights of an Employer with respect to the remuneration, terms of employment or dismissal of a Member, or any other dealings of the Employer with a Member in respect of the Member's employment and, without limiting the generality of the foregoing, nothing in those Rules shall be used to vary damages in any action brought against the Employer in respect of the dismissal of a Member, or affect the rights of a Member or the Member's Personal Representative or other persons to claim damages or compensation at common law or under

Workers Compensation legislation, and the Benefit payable shall not be reduced by reason of payment of such damages or compensation except as provided under the Rules or required by law.

2.8 Transfers between Divisions

At any time, a Participating Employer or a Member may, if the Trustee agrees, switch participation from a Division to another Division and the balances of the relevant Member's Accounts shall be transferred to Member's Accounts in the transferee Division.

3. TRUSTEE

3.1 Appointment and Removal of the Trustee

- (a) MIML will be the initial Trustee of the Fund and, subject to the Relevant Law, shall cease to be the Trustee on the first to occur of the following:
 - (i) the expiry of 5 years from the date on which the Administration Agreement is made or a longer period it agrees with the Nominator;
 - (ii) termination of the Administration Agreement by MIML for any reason;
 - (iii) a breach by MIML of any of its obligations under the Administration Agreement, unless it rectifies the breach in accordance with clause 13.3 of the Administration Agreement or the Nominator agrees to waive the breach for this purpose;
 - (iv) any of the circumstances listed in clause 13.4 of the Administration Agreement applies in relation to MIML (under clause 13.4 of the Administration Agreement, MIML shall be taken to be Party B for this purpose), unless the Nominator agrees to waive the circumstance for this purpose.
- (b) The Trustee shall be a constitutional corporation (as the term is defined in the Relevant Law) and, from the date required under the Relevant Law, hold an RSE licence (as that term is defined under the Relevant Law). Subject to paragraph (a) of this clause, the Trustee shall be appointed by the Nominator, which may appoint itself.
- (c) Each Member is deemed, upon admission to membership, to have confirmed his or her acceptance of the appointment of the Trustee.
- (d) A Trustee shall cease to hold office:
 - (i) if the Trustee resigns by written notice to the Nominator. This paragraph (d)(i) will not apply where MIML is Trustee of the Fund;
 - (ii) subject to the Relevant Law, if the Trustee is removed from office by notice in writing by the Nominator. This paragraph (d)(ii) will not apply where MIML is Trustee of the Fund;
 - (iii) if it goes into liquidation or is placed under receivership, or enters into a compromise relationship with creditors, or is wound up;
 - (iv) in the case of MIML, if it ceases to hold office in accordance with paragraph (a) of this clause.
- (e) In the event a Trustee position becomes vacant, a new Trustee shall be appointed by the Nominator within sixty days.
- (f) Any new Trustee shall, upon and by virtue of appointment, have all the powers, authorities, discretions and duties conferred or imposed on or undertaken by the Trustee under the Rules or otherwise by law.
- (g) The Trustee shall take all reasonable steps to ensure that each Employer shall, when required by the Relevant Law, establish a policy committee consisting of an equal number of Employer representatives and Member representatives. The Employer shall appoint the Employer

representatives of the policy committee while those Members who are employees of the Employer shall elect representatives in accordance with a procedure approved by the Trustee as being acceptable for the purposes of the Relevant Law.

3.2 *Liability of Trustee*

- (a) With the exception of fraud or wilful neglect or misconduct on the part of the Trustee, and such other conduct which if not excepted would cause this Clause 3.2 to be void under the Relevant Law, the Trustee shall not incur any liability for:
- (i) any loss suffered by a Division, the Fund, by any Member, by any Employer, or any person having at any time an interest in the Fund;
 - (ii) the act or default of any Member or Employer;
 - (iii) the neglect or default of any solicitor, banker, accountant, broker, Auditor, Actuary, adviser, agent or other such person, firms or companies employed in good faith by the Trustee;
 - (iv) the bankruptcy or insolvency of, or any fraudulent or negligent act by, any servant or delegate of the Trustee or any person with whom any investment may be deposited;
 - (v) time payment of an amount or benefit to a person reasonably believed to be entitled thereto but whom is in fact not so entitled;
 - (vi) any action taken or thing suffered in reliance upon any document, record, authority, representation, statement or evidence reasonably believed by the Trustee, or a servant or delegate, in good faith to be genuine, accurate and effective;
 - (vii) any act or acts done or omitted to be done bona fide in conformity with any decisions of the Trustee;
 - (viii) any mistake or determination or erroneous decision that exposes the Trustee to any claim by any person having an interest in a Division or the Fund; or
 - (ix) any breach of duty or trust;

PROVIDED THAT if any of the provisions of this Clause are void or ineffective by operation of law, or declared void by any Court of competent jurisdiction, such avoidance or ineffectiveness shall not affect the operation of the remaining provisions to the extent that the ineffective or void provisions can be severed from the Clause.

- (b) A reference in this Clause 3.2 to "Trustee" is, unless the context requires otherwise, also regarded as a reference to a director of the Trustee.

3.3 *Indemnity of Trustee*

- (a) The Trustee shall, to the extent permitted by law and except in the case of any conduct which if not excepted would cause this Clause 3.3 to be void under the Relevant Law, be indemnified from a Division or the Fund, as applicable, against all liabilities incurred by it in the exercise or purported exercise or as a consequence of the failure to exercise any of the trusts, powers, authorities and discretions vested in it under the Rules or at law and, to the extent permitted under the Relevant Law, shall have a lien on and may use the assets forming part of the Fund for the purposes of this indemnity. To avoid doubt, this Clause 3.3 is to be read subject to Section 20.
- (b) A reference in this Clause 3.3 to "Trustee" is, unless the context requires otherwise, also regarded as a reference to a director of the Trustee. The indemnity provided to a director extends to any liability for an act or omission of another director of the Trustee.

3.4 Policy Committees

- (a) Subject to the Relevant Law, a policy committee established under Clause 3.1 may meet, adjourn and otherwise regulate its meetings as it sees fit.
- (b) In the event a position in the policy committee becomes vacant, it shall be filled within 90 days.
- (c) In all other respects, policy committees shall operate on a basis which meets the requirements of the Relevant Law.

3.5 Remuneration of Trustee

The Trustee is entitled to charge fees in accordance with Clause 10.2. In addition, but subject to Section 20, the Trustee shall recover the costs and disbursements incurred in administering a Division or the Fund by deducting such expenses from the Division of the Fund, as applicable.

3.6 Delegation by Trustee

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

3.7 Confidentiality

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

3.8 Trustee Discretion

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

3.9 SIS Election

The Trustee may, and shall if required by SIS, elect that the Fund is to be a regulated superannuation fund under SIS.

4. CONTRIBUTIONS

4.1 Member Contributions

- (a) Subject to Clause 14.1, a Member shall contribute to a Division on the basis specified in the Participation Agreement (or on such other basis agreed with the Trustee).

- (b) Subject to Clause 14.1, an employer of an Individual Member or any person may contribute to a Division a Division on behalf of the Member on the basis agreed with the Trustee.
- (c) The Trustee may assume, without enquiry, that the Employer is authorised to deduct the contribution by a Member employed by that Employer from the Member's salary and the Trustee, and the Division, shall not be liable if such deduction is not authorised by the Member, or otherwise by law.
- (d) Upon any reduction or cessation of Member contributions to a Division, the Trustee shall adjust and otherwise deal with the Benefit of the Member in the manner it considers appropriate in the circumstances.

4.2 Employer Contributions

- (a) Subject to Clause 14.1, the Employer shall contribute to a Division in respect of a Member at the rate specified in the Participation Agreement (or such other rate agreed with the Trustee).
- (b) Upon any reduction or cessation of Employer contributions to a Division, the Trustee shall adjust and otherwise deal with the Benefit of the Member in the manner it considers appropriate in the circumstances.

4.3 Additional Contributions

Subject to Clause 14.1 and the approval of the Trustee, the Employer, any Member and any other person may make additional contributions to a Division. Additional contributions by the Member and any person other than the Employer shall be credited to the Member Contribution Account. Additional contributions by the Employer shall be credited, as directed by the Employer, to the Employer Contribution Account or the Member Contribution Account of the Member in respect of whom the additional contribution is made.

4.4 Payment of Contributions

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

4.5 *Splitting Contributions*

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

4.6 *Repaying Contributions*

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

5. ACCOUNTS AND ALLOCATION OF PROFITS AND LOSSES

5.1 *Accounts*

The Trustee shall maintain accounts in respect of Members and/or Beneficiaries and/or a Division in accordance with the Schedules.

5.2 *Allocation of Profits and Losses*

The Trustee shall allocate profits and losses in respect of a Division in accordance with the Schedule applicable to the Division.

5.3 *Trustee Powers – Accounts*

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

6. PAYMENT OF BENEFITS

6.1 *Overriding Restrictions*

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

- (a) the Trustee shall limit, adjust, pay, or delay the payment of a Benefit, or take such other appropriate action as is, in the opinion of the Trustee, necessary to ensure the Fund complies with the Relevant Law;
- (b) no deduction, reduction, forfeiture or other adjustment shall be made to or from any Benefit that has accrued, or become payable, to a Beneficiary in breach of the Relevant Law;

- (c) in any case where the Trustee applies for insurance of any part of the Benefit in respect of a Member, such Benefit shall (unless otherwise determined by the Trustee), be reduced to the extent to which the Trustee is unable to effect such insurance on terms acceptable to the Trustee, or by the amount of any such insurance or part thereof which, having been effected, the insurer declares void, or for which the insurer refuses liability, for any reason;
- (d) a Beneficiary shall accept payment of the Benefit calculated by the Trustee in full discharge of all claims on the Division;
- (e) the Trustee shall ensure Benefits are fully secured if so required under the Relevant Law, but the Trustee shall not be liable to provide Benefits greater in amount than can be secured by the assets of the Division;
- (f) the Trustee may, at the request of a Member, pay to or apply on behalf of the Member any part or the whole of the Member's Accounts, subject to the Relevant Law. To avoid doubt, this includes:
 - (i) ~~a Benefit being paid as a non-commutable pension (including an Allocated Pension or Term Allocated Pension) as permitted by the Relevant Law; and~~
 - (ii) ~~a payment in accordance with a release authority as permitted by the Relevant Law.~~
- (g) the Trustee shall determine any claim by or on behalf of a Member under Clause 6.3 and 6.4 within a period of 6 months of receiving written notice of the claim, or such longer period as it considers necessary. After the expiry of that time, subject to the Relevant Law the Trustee is not obliged to reconsider the claim.

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6.2 Retirement

- (a) On a Member's permanent retirement on or after the Normal Retirement Date the Member shall be entitled to receive a Benefit equal to the Division Credit for each Division.
- (b) ~~At the request of a Member who has attained age 65 or met another condition of release in accordance with the Relevant Law, the Trustee may permit the Member to withdraw from the Division (or Divisions, if more than one) prior to retirement in which case the Member shall be entitled to the Benefit under paragraph (a) of this Clause.~~

Deleted: PROVIDED
Deleted: if the Relevant Law requires a Member to be paid his or her Benefit before permanent retirement, the Trustee shall pay the Benefit.¶

6.3 Death Benefits

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

- (a) if the Trustee holds for the Member:
 - (i) a Benefit Direction, to the nominee in the Benefit Direction as a pension in accordance with the terms of the Benefit Direction; or
 - (ii) a Non-lapsing Nomination, in accordance with the terms of the Non-lapsing Nomination;

but if a nominee predeceases the Member who made a Non-lapsing Nomination or for any other reason (including without limitation that the Non-lapsing Nomination, or the part of it that relates to a particular nominee, is not valid at law) it cannot be paid, the Death Benefit (or, in the case of multiple nominees, the relevant part of the Death Benefit) is to be paid to the Member's Personal Representative;

- (b) if the Trustee does not hold a Benefit Direction or Non-lapsing Nomination for the Member,
 - to the Member's Personal Representative or if, to the Trustee's knowledge, there is no Personal Representative and the Trustee has a reasonable belief that there will not be a Personal Representative appointed, the Member's next of kin who is also a Dependant.

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

- (a) if the Trustee holds a Non-lapsing Nomination for the Death Benefit Pensioner, in accordance with the terms of the Non-lapsing Nomination,

but if a nominee predeceases the Death Benefit Beneficiary who made the Non-lapsing Nomination or for any other reason (including without limitation that the Non-lapsing Nomination, or the part of it that relates to a particular nominee, is not valid at law) it cannot be paid, the Death Benefit (or in the case of multiple nominees, the relevant part of the Death Benefit) is to be paid to the Death Benefit Pensioner's Personal Representative;

- (b) if:

- (i) the Death Benefit Pensioner was not the Beneficiary of a Benefit Direction; and
- (ii) the Trustee holds a Benefit Direction for the Death Benefit Pensioner,

to the nominee in the Benefit Direction as a pension in accordance with the terms of the Benefit Direction;

- (c) if the Death Benefit Pensioner does not satisfy paragraphs (a) or (b) above:

- (i) to the Death Benefit Pensioner's Personal Representative; or
- (ii) if, to the Trustee's knowledge, there is no Personal Representative and the Trustee has a reasonable belief that there will not be a Personal Representative appointed, to the Death Benefit Pensioner's next of kin who is also a Dependant.

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

6.3.4 If a Member or Beneficiary gives a notice to the Trustee under Clause 6.3.3 and the Trustee is satisfied that the notice is an exercise of discretion by the Member or Beneficiary, the Trustee may consent to the exercise of that discretion (which includes the giving of the notice) on any grounds that the Trustee considers appropriate.

6.3.5 A Non-lapsing Nomination remains current until:

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

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

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

6.3.7 The Trustee must:

- (a) accept a notice to the Trustee as a Non-lapsing Nomination if the Trustee is satisfied the notice is a Non-lapsing Nomination;
- (b) accept a notice to the Trustee to revoke or amend a current Non-lapsing Nomination if the Trustee consents to the notice in accordance with Clause 6.3.5.

