

# Avanteos Superannuation Trust Deed of Amendment

Avanteos Investments Limited (ABN 20 096 259 979) (**Trustee**)

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Deed of Amendment

## Details

Trustee	Name	Avanteos Investments Limited
	ABN	20 096 259 979
	Capacity	Trustee of the Avanteos Superannuation Trust
	Address	Level 15, 400 George St, Sydney NSW 2000
Governing law		Victoria
Recitals	A	The Trustee is the trustee of the Avanteos Superannuation Trust ABN 38 876 896 681 ( <b>Fund</b> ).
	B	The Fund is governed by a trust deed dated 9 June 2002, as amended from time to time ( <b>Trust Deed</b> ).
	C	Pursuant to clause 18 of the Trust Deed the Trustee may amend the Trust Deed.
	D	The Trustee wishes to update legislative references in the Deed, execute a consolidated form of the Trust Deed and address minor typographical errors in the Trust Deed.
	E	The Trustee is of the opinion that the amendments to the Trust Deed set out in this deed are permitted by clause 18 of the Trust Deed.

# Deed of Amendment

## General terms

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### 1 Definitions

In this Deed of Amendment:

**Trust Deed** has the meaning given in the Recitals.

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### 2 Amendments

- (a) With effect from 24 November 2023 clause 11.6 of the Trust Deed is deleted and the following is inserted in its place:

**"11.6 Categories of Membership**

The Trustee may:

- (a) establish different categories of Members within a Division or Sub-Plan or sub-categories within a category;
  - (b) determine that certain parts of this Deed and the Rules do not apply to Members within a particular category;
  - (c) close any category; or
  - (d) by resolution or by prescribing Rules:
    - (i) set specifications for a category, relating to the category name, benefits, contributions, investments, investment strategies or any other features or terms and conditions of any type (**Specifications**); and
    - (ii) amend the Specifications relating to any category at any time. The Trustee may not make any Amendment so as to adversely alter a beneficiary's right or claim to accrued Benefits or the amount of those accrued Benefits, unless permitted by Superannuation Law. The Trustee may rely on the advice of the Actuary as to whether any proposed Amendment will have such an adverse effect."
- (b) With effect from the date this Deed is signed by the Trustee, the Trust Deed is amended by deleting all existing provisions and replacing them by the provisions set out in the Schedule.

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### 3 No redeclaration or resettlement

The Trustee is not, by this Deed of Amendment:

- (a) redeclaring or resettling the Fund;
- (b) declaring any trust; or
- (c) causing the transfer, vesting or accruing of property in any person.

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**4      Governing law**

This Deed of Amendment is governed by and construed in accordance with the laws operating in Victoria.

**EXECUTED** as a deed.

Signing page

Dated: \_\_\_\_\_

**EXECUTED** by **Avanteos** )  
**Investments Limited** in accordance )  
with section 127(1) of the *Corporations* )  
*Act 2001* (Cth) by authority of its )  
directors: )  
Signed by: )  
kelly power )  
62A2C15B0ABA4D6..... )  
Signature of director )  
kelly power )  
..... )  
Name of director (block letters) )

Signed by: )  
anne clarke )  
32D5EE6FA4F8458..... )  
Signature of director/company )  
secretary\* )  
\*delete whichever is not applicable )  
anne clarke )  
..... )  
Name of director/company secretary\* )  
(block letters) )  
\*delete whichever is not applicable )

Schedule 1    Trust deed for the Avanteos  
Superannuation Trust

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# 1 INTERPRETATION

## 1.1 Definitions

In this Deed, unless the contrary intention appears:

**Accepted Non-Lapsing Nomination** in respect of a Member, is a written notice received by the Trustee from the Member that satisfies the definition of Non-Lapsing Nomination and to which the Trustee has consented in accordance with clause 14.7A(2), while that nomination remains binding under clause 14.7A(6).

**Accounts** means the accounts established and maintained by the Trustee in accordance with this Deed or any one or more of them.

**Actuary** means an actuary appointed by the Trustee under clause 5.9.

**Administration Charge** means a charge levied pursuant to clause 10.6 in respect of the administration of a Member's Member Account and other administrative matters relating to their Membership.

**Adviser Service Charge** means a charge levied pursuant to clause 10.3.

**Amend** includes amend, vary, add to, repeal, delete and replace and "Amendment" has a corresponding meaning.

**Attorney** means a person appointed as an attorney under the Power of Attorney.

**Auditor** means an approved auditor appointed by the Trustee.

**Avanteos Superannuation Trust** means the collection of separate trusts and superannuation funds established pursuant to this Deed.

**Benefit** means any amount payable or which may become payable to or in respect of a Member.

**Benefit Charge** means a charge levied pursuant to clause 10.2 in respect of a Benefit payable to a Member.

**Benefit Form** means a document setting out the benefits to which a Member or group of Members may be entitled, and when that entitlement may arise, and includes, as relevant, the Rules for a Division or Sub-plan determined by the Trustee by resolution or deed amendment, Specifications determined by the Trustee under clause 11.6, the benefit design agreed between a Participating Employer and the Trustee in respect of the Participating Employer's employees who are Members in the Fund or a Disclosure Document.

**Binding Nomination** means a nomination which:

- (a) has been given to the Trustee by a Member;
- (b) is in a form acceptable to the Trustee;
- (c) requires the Trustee to pay the Member's Benefits to persons nominated in the nomination if the Member dies (the nominees must be dependants or legal personal representatives of the Member); and
- (d) complies with Superannuation Law and any conditions specified by the Trustee from time to time.

**Commencement Date** means 9 July 2002.

**Consumer Price Index** for a date means the consumer price index number (all groups weighted average of eight capital cities) most recently published by the Australian Bureau of Statistics before that date or, if that index is discontinued and replaced, then the replacement index.

**Contribution** means any amount paid or transferred to a Division in respect of a Member from any source or by any person, including the Member.

**Custodian** means a custodian which satisfies the requirements of Superannuation Law.

**Deed** means this Deed and any Rules made under this Deed.

**Disclosure Document** means any disclosure statement or document issued by the Trustee under Superannuation Law in connection with any Division or sub-plan.

**Division** means a Division which has been established by the Trustee pursuant to clause 2.3.

**Division 1** means the complying superannuation fund established as a Division of the Avanteos Superannuation Trust under clause 2.1 and governed by the Rules set out in Schedule 1.

**Division 1 Employer** means an Employer who has been admitted as a Participating Employer in relation to Division 1 and who has not ceased to be a Participating Employer or Division 1 Employer.

**Division 1 Member** means a person who has been admitted as a Member of Division 1 in accordance with the Deed and who has not ceased to be a Member.

**Eligible Fund** means:

- (a) a complying superannuation fund, a complying ADF, a retirement savings account or a roll-over annuity, an annuity complying with the standards prescribed under Superannuation Law; or
- (b) such other fund or annuity which the Trustee determines to be an Eligible Fund provided that:
  - (i) the acceptance of moneys or assets from that fund or annuity; or
  - (ii) the payment or transfer of moneys or assets to that fund or annuity,

would not in the opinion of the Trustee jeopardise the status of any relevant Division as a complying superannuation fund in any year of income.

**Eligible Person** means a person nominated by the Member in the Non-Lapsing Nomination who is, subject to Superannuation Law, eligible under the Trustee's instructions, guidelines or criteria to receive their proportion of the Benefit payable (if any) on the death of the Member as specified by the Member in the Non-Lapsing Nomination.

**Expenses** include any costs, expenses, charges and liabilities whatsoever which are incurred by the Trustee in connection with:

- (a) the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed or the Rules; or

- (b) the management, administration, operation or promotion of the Avanteos Superannuation Trust or any of the Divisions or sub-plans,

and include any insurance premiums in relation to:

- (c) the Divisions and sub-plans; or
- (d) the directors of the Trustee in the discharge of their duties as directors of the Trustee.

***Employer*** means, in relation to a Member, the employer of that Member.

***Exit Charge*** means a charge levied pursuant to clause 10.8 in respect of any withdrawal from or payment from a Division relating to a Member.

***Full-Time Employment*** in relation to a person means a person who is Gainfully Employed for 30 hours or more weekly or such greater or lesser period prescribed by Superannuation Law as being necessary for a person to be treated as in full-time employment for the purposes of Superannuation Law.

***Fund*** means the Avanteos Superannuation Trust as governed by this Deed.

***Gainfully Employed*** in relation to a person means that the person is employed for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages or otherwise is treated as Gainfully Employed for the purposes of Superannuation Law.

***Income Tax Acts*** means the Tax Act, the Income Tax Rates Act 1986 and any other Act relating to the imposition, collection and administration of Tax and any regulations made under the foregoing Acts.

***Insurance Charge*** means a charge levied pursuant to clause 10.9 in respect of administrative functions performed by the Trustee in connection with making Insured Benefits available to a Member through the Avanteos Superannuation Trust.

***Insurance Policy*** means a policy of insurance issued to the Trustee by an Insurer.

***Insured Benefit*** means an Insured Death Benefit or Insured Disability Benefit.

***Insured Benefits Form*** means a document containing information provided by the Member, prospective Member or relevant Participating Employer in relation to the Insured Benefits to be arranged in respect of a Member or prospective Member including, for example, the amount of the Insured Benefits.

***Insured Death Benefit*** means a Benefit or part of a Benefit to be provided in respect of a Member on the death of a Member under an Insurance Policy.

***Insured Disability Benefit*** means a Benefit or part of a Benefit to be provided in respect of a Member under an Insurance Policy upon the Member becoming Totally and Permanently Disabled or becoming disabled in a manner described or defined in the Rules of a Division or Sub-plan as the case may be.

***Insurer*** means any insurance company which issues a policy of insurance to the Trustee for the purpose of insuring any Benefit payable under this Deed or any asset of a Division or Sub-plan.

***Investment Charge*** means a charge levied pursuant to clause 10.4 in respect of any investment made or realised in respect of a Member.

**Investment Choice Form** means a document containing information provided by the Member, prospective Member or relevant Participating Employer in relation to the investment strategies to be implemented in respect of the Member's interest in the relevant Division or Sub-plan.

**Member** means a person who has been accepted for membership of a Division or Sub-plan and who has not ceased to be a Member.

**Member Account** means an account established and maintained by the Trustee in respect of a Member in accordance with the relevant Rules.

**Non-Lapsing Nomination** in respect of a Member, is a written notice received by the Trustee from the Member which:

- (a) is in a form approved by the Trustee;
- (b) nominates one or more of the Member's dependants and/or the legal personal representative of the Member to receive the Benefit payable (if any) on the death of the Member; and
- (c) sets out the proportion of any Benefit that will be payable to that nominated person, or to each of those nominated persons.

**Ongoing Charge** means a charge levied pursuant to clause 10.7 in respect of a Member's ongoing Membership.

**Participating Employer** means an Employer who has been admitted by the Trustee to participate in a Division or Sub-plan pursuant to the Rules and who has not ceased to be a Participating Employer.

**Part-Time Employment** in relation to a person means that the person is Gainfully Employed for 10 hours or more weekly but less than 30 hours weekly or such other period prescribed by Superannuation Law as being necessary for a person to be treated as in part-time employment for the purposes of Superannuation Law.

**Pension Request Form** means a document containing information provided by a Member in respect of a proposed pension nominating, for example, the regular amounts of the proposed pension and the intervals at which it is to be paid.

**Power of Attorney** means an instrument creating a power of attorney properly executed in accordance with the requirements of the *Instruments Act 1958* (Vic) or the equivalent legislation in the State or Territory in which the power of attorney is executed.

**Prescribed Age** means the age or ages prescribed under Superannuation Law at which a Benefit may or must be paid to a person from a superannuation fund without that person having retired from any business, trade, profession, vocation, calling, occupation or employment in which the Member is engaged.

**Preservation Requirements** means any requirement or restrictions imposed by Superannuation Law that prevent or restrict Benefits from being paid to or in respect of a Member until the occurrence of certain events, the noncompliance with which may result in a particular Division failing to be a complying superannuation fund in any year of income.

**Register of Members** means the register of Members maintained by the Trustee pursuant to, and recording the details contemplated by, clause 21.2.

**Reserve Account** means an account created pursuant to clause 5.15 of this Deed.

**Rules** means the rules established by the Trustee under clauses 2.3, 5.6 or 11.6.

**Salary Continuance Benefit** means amounts payable to or in respect of a Member under a Salary Continuance Policy.

**Salary Continuance Policy** means an insurance policy which insures Members in the event that they cease to be Gainfully Employed by reason of their ill-health otherwise than in the case of the Member's Total and Permanent Disablement.

**Secretary** means the person appointed to that office by the Trustee.

**Service** means, in relation to a Member, that Member's employment with their Employer and a reference to a Member ceasing to be in the Service of an Employer:

- (a) does not include any suspension of Service approved by the Employer and notified to the Trustee; but
- (b) does include a reference to the date on which any suspension of Service ceases where at or before the end of the period of suspension of Service the Member has not resumed employment with an Employer.

**Special Resolution** means a resolution passed by 75% of the votes cast at a duly convened meeting of the Members of a Division.

**Sub-plan** or **sub-plan** means a sub-plan of a Division established by the Trustee pursuant to clause 2.3.

**Superannuation Authority** means any person or body appointed under any Superannuation Law which is empowered under that legislation or some other legislation to exercise any discretion, give any consent or approval or otherwise give effect to and administer the Superannuation Law and includes the Superannuation Complaints Tribunal.

**Superannuation Guarantee Charge Acts** means the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Act 1992 and any other Act relating to the imposition, collection and administration of the superannuation guarantee charge and any regulations made under the foregoing Acts.

**Superannuation Law** means requirements in any of the Corporations Act 2001, the Superannuation Industry (Supervision) Act 1993, the Tax Act, the Family Law Act 1975, the Superannuation Guarantee Charge Acts and regulations made under those Acts and all other requirements, whether legislative or otherwise including:

- (a) any administrative guidelines issued by a Superannuation Authority; or
- (b) statements by government advising changes and proposed changes to Superannuation Law,

with which the Fund must comply as a complying superannuation fund (or which, in the reasonable opinion of the Trustee, the Fund ought to comply).

**Switching Charge** means a charge levied pursuant to clause 10.5 in respect of the transfer of any part of a Member's Member Account from one investment strategy to another.

**Tax** means income tax (including any tax on the disposal of assets), goods and services tax, contributions tax, withholding tax, stamp, financial institutions and other duties, tax and other taxes, levies, imposts, deductions and charges

whatsoever (including in respect of any duty imposed on receipts or liabilities of financial institutions any amounts paid in respect thereof to another financial institution) together with interest thereon and penalties with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof.

**Tax Act** means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 as amended from time to time.

**Termination Date** means the date on which the Trustee determines, or Members resolve, to terminate and wind-up a particular Division pursuant to clause 19.1.

**Total and Permanent Disablement** in respect of a Member has the meaning which that term or like term is given under the Insurance Policy applicable to that Member and

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

**Trustee** means the Trustee named in this Deed and any other Trustee appointed in accordance with the provisions of this Deed.

## **1.2 Definitions from Superannuation Industry (Supervision) Act**

In this Deed and in any document issued by the Trustee, unless the contrary intention appears, the following terms will have the same meaning as they have in the Superannuation Industry (Supervision) Act 1993 and the Superannuation Industry (Supervision) Regulations 1994, as those terms may be amended from time to time:

**actuary**  
**approved auditor**  
**associate**  
**constitutional corporation**  
**dependant**  
**disqualified person**  
**eligible rollover fund**  
**investment manager**  
**legal personal representative**  
**pooled superannuation trust**  
**regulated superannuation fund**  
**relative**  
**successor fund**  
**Superannuation Complaints Tribunal**  
**superannuation fund**  
**year of income.**

## **1.3 Definitions from Tax Act**

In this Deed and in any documents issued by the Trustee, unless the contrary intention appears, the following terms shall have the same meaning as they have in the Tax Act:

**complying approved deposit fund**  
**complying superannuation fund**

## **1.4 Payment in respect of a Member**

In this Deed, unless the contrary intention appears, a payment in respect of a Member includes a payment or transfer of assets from a Division or Sub-plan in satisfaction of any obligation to or in respect of a Member and, without limiting

the generality of the foregoing, includes a payment or an in specie transfer of assets:

- (a) to or for the benefit of a Member;
- (b) to or for the benefit of a dependant of a Member;
- (c) to another person at the direction of a Member or the legal personal representative of a Member;
- (d) to or for the benefit of the legal personal representative of a Member; or
- (e) to or for the benefit of any other person permitted under Superannuation Law.

## **1.5 Interpretation**

In this Deed unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) references to a person includes a corporation, firm, partnership, trust, fund, body corporate, unincorporated body or entity, including any government entity and vice versa;
- (e) headings are for convenience only and do not affect interpretation;
- (f) references to any party to this Deed or any other agreement or document include the party's successors and permitted assigns;
- (g) references to any agreement or document include references to such agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Deed; and
- (h) references to any legislation or to any provision of any legislation (including the terms referred to in clauses 1.2 and 1.3) include any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments under it.

## **1.6 Application of Deed and Rules**

Unless the context requires otherwise:

- (a) this Deed will apply to all Members;
- (b) the Rules in respect of a particular Division and of a sub-plan will only apply to Members of that Division or sub-plan respectively; and
- (c) this Deed will prevail over the Rules of any Division or of a sub-plan to the extent of any inconsistency (unless expressly specified otherwise).

## **2 THE AVANTEOS SUPERANNUATION TRUST**

### **2.1 Establishment of the Avanteos Superannuation Trust and the initial Division**

On the Commencement Date:

- (a) the Avanteos Superannuation Trust is established;
- (b) Division 1 is established as a superannuation fund which is intended to be a complying superannuation fund:
  - (i) for the purpose of providing superannuation benefits to or in respect of Members on their retirement, death, disablement or on reaching a particular age; and
  - (ii) for all other purposes which may be permitted under Superannuation Law;
- (c) the Trustee is appointed, and accepts appointment, as trustee of the Avanteos Superannuation Trust and all Divisions established in connection with, or introduced to, the Avanteos Superannuation Trust.

### **2.2 Name of the Avanteos Superannuation Trust**

The name by which the Divisions are to be collectively known is "Avanteos Superannuation Trust" or any other name selected by the Trustee from time to time. The Trustee may name any Divisions or sub-plans and may also change those names at any time.

### **2.3 Power to establish new Divisions, Sub-plans and Categories**

- (a) The Trustee may by deed establish new Divisions or may by resolution divide a Division into Sub-plans or by resolution establish new Sub-plans;
- (b) When establishing a new Division or Sub-plan, including when dividing a Division into Sub-plans, the Trustee may establish different rules, including without limitation different features, benefits, investment options and fees, which will apply to each Division or Sub-plan, by deed of amendment in respect of a Division and by resolution in respect of a Sub-plan provided that any change to the rules which apply to a current Member must not adversely change the Member's right or claim to accrued Benefits or the amount of those accrued Benefits unless permitted under Superannuation Law;
- (c) The Trustee may establish categories of Membership within a Division or Sub-plan pursuant to clause 11.6;
- (d) The Trustee may determine that one or more Sub-plans will be redesignated as categories of membership, for the purposes of clause 11.6, within a new Sub-plan established for this purpose (**New Sub-plan**);
- (e) If there are categories of membership within a Sub-plan, the Trustee may decide that some or all of those categories of membership will become categories of membership within the New Sub-plan or be designated as sub-categories of membership;
- (f) Clause 11.6 will apply to a sub-category of membership on the basis that it is to be treated as a category for the purposes of that clause;

- (g) The Trustee may issue white label versions of any Division or Sub-plan under a different name to the name of the Division or Sub-plan and with its own Disclosure Documents.

2.3A Subject to Superannuation Law, the Trustee may transfer the whole or part of a Member's benefit under a sub-plan to another sub-plan without the Member's consent provided that, to the extent the transfer involves an intra fund transfer within the meaning of *ASIC Corporations (Superannuation: Accrued Default Amount and Intra-fund Transfers) Instrument 2016/64*, the transfer may not be made without the Member's consent unless the following requirements are satisfied:

- (a) the sub-plan to which the Member's benefit is to be transferred must confer on the Member equivalent rights to the rights that the Member had under the original sub-plan in respect of benefits; or
- (b) the transfer could, in the absence of *ASIC Corporations (Superannuation: Accrued Default Amount and Intra-fund Transfers) Instrument 2016/64*, have lawfully been made without the Member's consent.

A reference to *ASIC Corporations (Superannuation: Accrued Default Amount and Intra-fund Transfers) Instrument 2016/64* in this clause 2.3A includes any modification or replacement of it.

The Trustee may establish one or more new categories of membership, for the purposes of clause 11.6, within the sub-plan to which benefits are transferred if it determines that it is appropriate.

## **2.4 Power to introduce existing funds as Divisions, sub-plans or categories**

The Trustee may by deed determine that an existing fund is to be introduced to the Avanteos Superannuation Trust and become a Division, sub-plan within a Division or a category within a sub-plan or Division, if:

- (a) the Trustee has been appointed as the trustee of the existing fund; and
- (b) the trust deed and rules governing the existing fund provide that this Deed applies in respect of the existing fund in accordance with clause 1.6.

The existing fund will become a Division of the Avanteos Superannuation Trust, a sub-plan of a Division or a category within a sub-plan or Division (as the case may be) on and from the date specified in the deed or, if no date is specified, from the date of the deed. The Trustee may prescribe Rules regulating any such Division, sub-plan or category.

## **2.5 Power to close Divisions and sub-plans**

The Trustee may close a Division, or any sub-plan of a Division, following which:

- (a) no further Contributions may be made to the relevant Division or sub-plan; and
- (b) no further Members may be admitted to the relevant Division or sub-plan,

unless the Trustee re-opens the Division or sub-plan.

To avoid doubt if, for the purposes of clause 2.3, one or more Existing Sub-plans are redesignated as categories of membership within a New Sub-plan, the Existing Sub-plans will be closed for the purposes of this clause 2.5.

The Trustee may give effect to closure of a Division or any sub-plan of a Division by resolution or by deed.

## **2.6 Avanteos Superannuation Trust comprised of Divisions**

Unless the Trustee determines otherwise, each Division will be a separate trust and may, for example, be a complying superannuation fund or a pooled superannuation trust. The Avanteos Superannuation Trust, each Division and their respective Members are all regulated in the manner contemplated by clause 1.6. A Member may be a Member of one or more Divisions.

## **2.7 Assets of the Avanteos Superannuation Trust**

- (a) The assets of the Avanteos Superannuation Trust will be vested in the Trustee upon trust and are to be held and applied in the manner set forth in this Deed.
- (b) The assets of each Division may be held by the Trustee on separate trusts. The assets of a Division which is a separate trust may not be applied in any way towards the liabilities of any other Division.
- (c) The Trustee will keep records which enable the assets and liabilities relating to a particular sub-plan within a Division, or a particular category of Members within a sub-plan or a Division, to be identified as such.

## **2.8 Beneficial interest in Division**

Each Member is entitled to a beneficial interest in the Division or sub-plan in respect of which the person is a Member. However, a Member's beneficial interest in a Division or sub-plan:

- (a) will not entitle the Member:
  - (i) to interfere with the rights or powers of the Trustee;
  - (ii) to exercise any rights, powers or privileges in respect of any investments of any Division; or
  - (iii) to require the transfer of any assets of any Division; and
- (b) will not confer any interest in any particular asset of any Division.

## **2.9 Employers and members bound by deed**

All Participating Employers and Members and any person claiming through them are bound by this Deed and this Deed is the exclusive source of rights:

- (a) Between a Participating Employer and the Trustee; and
- (b) Between a Member and the Trustee in respect of the Member's membership of the Avanteos Superannuation Trust, notwithstanding any other arrangement or agreement between the Member and the Trustee, other than any rights that a Member may have accrued in respect of the Avanteos Superannuation Trust prior to any amendment to the Deed dated on or after 1 July 2010 (including but not limited to any direct debit agreement and any agreements in relation to adviser service fees and

access facilities), and any other arrangement which the Trustee and a Member agree by word or conduct will continue.

### **3 THE TRUSTEE**

#### **3.1 Eligibility**

The Trustee must be a constitutional corporation.

#### **3.2 Term of office**

The Trustee will hold office in relation to a Division or sub-plan until:

- (a) it is a disqualified person or otherwise disqualified from that office by operation of law; or
- (b) it retires from that office and appoints a replacement in compliance with Superannuation Law.

An appropriate Superannuation Authority may appoint a successor Trustee if the Trustee for the time being is or becomes a disqualified person or is otherwise disqualified from office.

#### **3.3 Consequences of retirement of Trustee**

- (a) Upon the request of a successor Trustee, a former Trustee must do any thing and execute any document which the successor Trustee reasonably considers to be necessary to give effect to:
  - (i) the retirement of the former Trustee; and
  - (ii) the vesting of the assets of the relevant Division in the successor Trustee.
- (b) If the Trustee ceases to hold office, it may require the successor Trustee to change the name of the Avanteos Superannuation Trust or any Division, including any sub-plans, so that the name does not include the word "Avanteos" or any word which is substantially or deceptively similar.
- (c) Upon retirement, the Trustee will be deemed to be discharged from the trusts of this Deed and the duties and obligations of a Trustee under this Deed at the time and on the date of retirement.
- (d) Nothing in this Deed relieves a constitutional corporation which ceases to be Trustee from liability for any antecedent breach of trust for which it would otherwise be liable.

#### **3.4 Consequences of retirement of Trustee in respect of some sub-plans only**

- (a) If the Trustee retires as the trustee of a sub-plan pursuant to clause 3.2(b) and continues as trustee of the relevant Division, the sub-plan will immediately and automatically:
  - (i) cease to be a part of the Division and the Avanteos Superannuation Trust; and
  - (ii) be constituted as a separate trust and superannuation fund.

- (b) If a sub-plan ceases to be a part of a Division and becomes a separate trust and superannuation fund by reason of clause 3.4(a):
  - (i) Clause 3.3 will apply as if the former sub-plan had been a Division; and
  - (ii) the former sub-plan will be governed by this Deed as if it were a Division (and with such other modification as may be necessary in the circumstances) until the successor Trustee exercises its power under clause 18 to amend this Deed in so far as it applies to the former sub-plan. For the avoidance of doubt, the successor Trustee may not amend this Deed in so far as it applies to the remaining Divisions of the Avanteos Superannuation Trust.

### **3.5 Remuneration of the Trustee**

In addition to any charges levied under clause 10, the Trustee is entitled to be remunerated out of the assets of the Divisions for its services as Trustee. Remuneration paid to the Trustee under this clause must not exceed, in respect of any calendar month, 5% of the average daily balance of all Member Accounts of the relevant Division for that month or such lesser amount as may be specified:

- (a) in a relevant Disclosure Document; or
- (b) by the Trustee by giving 30 days' prior notice to Members in the case of a proposed increase in the Trustee's Remuneration.

## **4 PROCEEDINGS OF TRUSTEE**

A Trustee may act by resolution of its board of directors or by any person appointed for the purpose by resolution of its directors, whether or not the exercise of a discretion is involved.

## **5 POWERS OF THE TRUSTEE**

### **5.1 General powers**

In addition to powers, discretions and authorities conferred by law, the Trustee will have power to do anything and may execute any document which it considers necessary or appropriate to administer the Avanteos Superannuation Trust and the Divisions and comply with Superannuation Law. To that end, the Trustee will have all the powers of a natural person as if it were the beneficial owner of the assets comprising the Avanteos Superannuation Trust and the Divisions.

### **5.2 Examples of matters within Trustee power**

Without limitation, the Trustee may:

- (a) open and operate bank accounts or accounts with cash management trusts or other financial institutions as it thinks fit and all cheques and other negotiable instruments and all receipts for money paid to the Divisions may be signed, drawn, accepted and endorsed or otherwise executed in such manner as the Trustee thinks fit;
- (b) effect, acquire and vary policies of insurance of any kind which:

- (i) relate to any risk, contingencies or liabilities of the Avanteos Superannuation Trust or any of the Divisions; or
  - (ii) insure the payment of the Benefits;
- (c) settle, compromise or submit to arbitration any claims or matters relating to this Deed, the Avanteos Superannuation Trust, the Divisions or the rights of any Member;
- (d) at the expense of the relevant Division, instruct actuaries, auditors, solicitors, accountants and other advisers and act upon their advice without being liable to any Member, Employer or other person under this Deed in respect of anything done in accordance with such advice;
- (e) delegate all or any of its powers and duties to any such person (including a related entity) as the Trustee may think fit and the Trustee will not be responsible for any loss thereby incurred and will be entitled to make payment out of the assets of the relevant Division to such persons for work done or services rendered;
- (f) make regulations and adopt procedures in relation to the calculation and rounding off of Contributions, Benefits, amounts debited or credited to any account, the valuation of assets or any other matters as may be necessary or convenient for the Avanteos Superannuation Trust; and
- (g) subject to Superannuation Law:
  - (i) borrow moneys from any person upon such terms and upon giving such security as the Trustee may determine and invest any moneys so borrowed as part of a Division; and
  - (ii) mortgage, charge or encumber the whole or any part of a Division from time to time to secure repayment of the moneys borrowed and interest thereon.

#### **5.2A Power to augment or increase benefits**

- (a) Without limiting any of its other powers under this Deed and subject to Superannuation Law, the Trustee may augment or increase the amount of any benefits payable from the Fund on such terms and conditions as it thinks fit provided that any augmentation or increase which would result in an increase in a Participating Employer's obligation to contribute to the Fund will be subject to the consent of the Participating Employer concerned.
- (b) The Trustee's power under clause 5.2A(a) includes the power to make anti-detriment payments of the kind contemplated by and referred to in section 295-485 of the *Income Tax Assessment Act 1997* (Cth).

#### **5.3 Power to invest generally**

Subject to Superannuation Law, any assets or money of a Division or Sub-plan may be invested or applied by the Trustee in or towards investments, property, assets, rights or choses in action:

- (a) of whatsoever nature;
- (b) whether involving liability or not;
- (c) whether producing income or not; or

- (d) upon personal credit (with or without security),

as if the Trustee were the beneficial owner of the assets or money. The Trustee has power to sell, deal with, realise and re-invest any such assets, investments, property, rights or choses in action or any proceeds thereof.

### **5.3A Other Investment Obligations**

To the maximum extent permitted by law:

- (a) the only obligations on the Trustee with regard to the making and monitoring of investments for the Divisions (**Investment Obligations**) are those imposed by this Deed and the Superannuation Industry (Supervision) Act 1993 and Superannuation Industry (Supervision) Regulations 1994; and
- (b) all Investment Obligations imposed or implied by law, equity or statute other than those referred to in clause 5.3A(a) are expressly excluded from direct or indirect application to the Divisions.

### **5.4 Power to invest in financial instruments and derivatives and to create charges**

Subject to Superannuation Law, the Trustee may:

- (a) enter into arrangements relating to financial instruments, contracts and other derivative transactions of whatever nature (whether in Australia or elsewhere) including:
  - (i) currency hedging arrangements;
  - (ii) options;
  - (iii) interest rate swaps;
  - (iv) futures;
  - (v) any index traded on an options, futures or forward market; and
  - (vi) any other similar transactions of whatever nature; and
- (b) give a charge or other security over, or in relation to, an asset of a Division for the purpose of securing the performance of the Trustee's obligations in relation to an arrangement within the meaning of paragraph (a).

### **5.5 Power to invest in a common pool**

For the avoidance of doubt, the Trustee may:

- (a) invest any of the assets of a Division in a common pool with the assets of any other superannuation fund or other fund; and
- (b) make such arrangements for determining the proportion of the investments so held which is attributable to a Division and to such other superannuation fund or other fund as it considers just and equitable.

### **5.6 Power to make rules**

The Trustee may make Rules:

- (a) governing the establishment, operation and administration of a Division or Sub-plan, including matters relating to the Benefits which may be available to Members of a Division or Sub-plan; and
- (b) dealing with matters not specifically dealt with by the Deed, including matters incidental to the operation of the Deed,

by deed of amendment. The Rules form part of this Deed and may be Amended in accordance with clause 18.

## **5.7 Power to appoint custodians and investment managers**

- (a) The Trustee may at any time appoint:
  - (i) Custodians; or
  - (ii) investment managers,to perform such authorities, powers and discretions as may be delegated by the Trustee. The Trustee may remove or replace a Custodian or investment manager at any time.
- (b) Subject to Superannuation Law, the Trustee will not be liable for any act, omission, error of judgment, negligence or breach of trust of any Custodian or investment manager.
- (c) The Trustee has no obligation to take proceedings against any Custodian or investment manager.
- (d) The Trustee may remunerate Custodians and investment managers out of the assets of the relevant Divisions.

## **5.8 Power to appoint secretary**

- (a) The Trustee may appoint any person as Secretary on such terms as it thinks fit and may remove the Secretary and appoint a replacement at any time.
- (b) The Secretary will perform such duties as the Trustee may direct.
- (c) The Trustee may appoint an acting Secretary:
  - (i) pending the appointment of a Secretary;
  - (ii) during the absence of the Secretary; or
  - (iii) if the Secretary is unable to act.
- (d) The receipt of the Trustee, or the receipt of the Secretary given on the Trustee's behalf, for any moneys payable to a Division will be a sufficient discharge to the person by whom those moneys were paid.

## **5.9 Power to appoint actuary**

The Trustee may appoint a suitably qualified person (within the meaning of Superannuation Law) to be the Actuary for a Division on terms acceptable to the Trustee. The Trustee may remove any such Actuary and appoint a replacement.

## **5.10 Powers in relation to other persons**

The Trustee may do all things considered by it to be necessary or convenient to comply with any provision of Superannuation Law and without limiting the generality of the foregoing the Trustee:

- (a) may require Employers, Members, dependants of Members or other persons entitled to a Benefit or making Contributions to a Division to provide such information as the Trustee may require in order:
  - (i) to satisfy itself that Superannuation Law is complied with;
  - (ii) to determine whether any Tax is payable; or
  - (iii) to calculate any Benefit;
- (b) may refuse to accept any Contribution or refuse to pay any Benefit to any person where:
  - (i) acceptance of the Contribution or payment of the Benefit would be inconsistent with Superannuation Law; or
  - (ii) information sought under paragraph (a) has not been provided;
- (c) may lodge any returns or other documents required by Superannuation Law; and
- (d) make objection to any assessment or seek review of any determination of any Superannuation Authority and may pursue any objection or review by way of legal or other proceedings.

## **5.11 Power to delegate**

The Trustee may delegate any of its functions or powers under this Deed to any person, including a related body corporate, including the following functions and powers:

- (a) the establishment and maintenance of any Accounts;
- (b) the receipt of Contributions and the payment of Benefits;
- (c) the establishment and maintenance of any records, registers or other information required to be maintained by this Deed;
- (d) the power to do anything or obtain any approval that may be necessary or convenient in order to comply with Superannuation Law or the Income Tax Acts;
- (e) the power to accept or reject applications by Members to join a Division; and
- (f) matters relating to the administration and operation of the Avanteos Superannuation Trust and its Divisions and sub-plans.

The person to whom such powers or functions are delegated may be remunerated out of the assets of the Avanteos Superannuation Trust or relevant Division.

## **5.12 Power to appoint professional advisers and to rely on their advice**

The Trustee may act on the advice or opinion of any consultant, accountant, actuary, barrister, solicitor, medical practitioner or other professional person or expert (whether or not such advice or opinion has been obtained by the Trustee) and will not be liable to any Division for any loss or damage for so acting in good faith.

## **5.13 Enquiries or complaints**

The Trustee will comply with Superannuation Law in relation to enquiries and complaints about the operation or management of the Divisions. The Trustee may require a person making an enquiry or complaint to pay the Trustee's reasonable costs and expenses incurred in responding to that enquiry or complaint.

## **5.14 Trustee to keep records**

The Trustee will ensure that all records and reports required by Superannuation Law are kept and given in accordance with Superannuation Law.

## **5.15 Reserve Account**

- (a) The Trustee may establish and maintain one or more Reserve Accounts for the general purposes of the Fund and record in any such account:
  - (i) any fees or other amounts charged to Members under the provisions of the Deed;
  - (ii) transfers to the Reserve Account in specie of the whole or part of a Member's interest in the suspended investments of the Fund where that Member's interest in the suspended investments is rolled over or redeemed;
  - (iii) amounts transferred from other funds which the Trustee decides to credit to the Reserve Account;
  - (iv) any investment earnings, whether positive or negative, on the assets of the Reserve Account; and
  - (v) any other amounts which the Trustee considers necessary or desirable to be credited to the Reserve Account.
- (b) The Trustee may apply amounts held in a Reserve Account for one or more of the following purposes:
  - (i) meeting Expenses or other liabilities of the Fund;
  - (ii) the payment of any fees, charges or Expenses charged to Members under the Deed or otherwise payable from the Fund;
  - (iii) the funding of Members' requests for rollovers or redemptions where the amount requested is attributable (in whole or part) to a suspended investment of the Fund;
  - (iv) any other purposes which the Trustee considers necessary or desirable.

## 5.16 Action despite interest

- (a) The Trustee will perform its functions and exercise its powers under this Deed in the best interests of the Members, and in any circumstance where the Trustee has an interest in the relevant matter, the Trustee:
  - (i) must give priority to the interests of the Members; and
  - (ii) where it does give such priority the Trustee may also act in its own interests.
- (b) To the extent not prohibited by Superannuation Law, all functions and powers conferred upon the Trustee or any director of the Trustee by this Deed or by law may be exercised notwithstanding that the Trustee or director:
  - (i) may have a direct, indirect or personal interest (regardless of the capacity in which that interest is held) in the manner or result of exercising such function or power; or
  - (ii) may benefit directly or indirectly as a result of any such function or power.

## 6 INVESTMENT STRATEGIES AND INVESTMENTS

### 6.1 Formulation of investment strategies and beneficiary investment choice

- (a) The Trustee must formulate one or more investment strategies in respect of the Divisions and sub-plans. The Trustee will determine the extent, if any, to which Members may give directions to the Trustee in respect of the investment strategies to be implemented in respect of their respective interests in a Division or Sub-plan. Such directions, if permitted, must be set out in an Investment Choice Form which is in a form acceptable to the Trustee. A Member may vary any directions previously given by giving the Trustee a new Investment Choice Form, in which case a Switching Charge may be debited from the Member's Member Account.
- (b) The Trustee may vary any investment strategies previously formulated and must notify any Members affected by the variation within a reasonable time after the variation.
- (c) Nothing in this clause 6.1 or any Investment Choice Form limits the Trustee's powers and discretions under clause 5.3.

### 6.2 Investment in another Division

If the assets of a Division (**first Division**) are invested in another Division (**second Division**), the Trustee must ensure that the investments of the second Division which represent assets of the first Division are:

- (a) consistent with the investment strategies and Investment Choice Forms applying in respect of the first Division; and
- (b) recorded and accounted for such that the Trustee is able to identify the earnings and expenses of the investments of the second Division.

### **6.3 Voting rights in relation to investments**

- (a) The Trustee is entitled to exercise any voting rights in respect of investments held on behalf of Members. In exercising those rights, or abstaining from voting, the Trustee must act in the interests of Members. The Members are not entitled to interfere with the exercise or non-exercise of voting rights by the Trustee.
- (b) The Trustee has no liability whatsoever in connection with:
  - (i) the management of any entity in which an investment has been made on behalf of Members or any Division; or
  - (ii) any vote, action, conduct, decision or consent of the Trustee or its proxy or attorney whatsoever in relation to an entity in which an investment has been made on behalf of Members or any Division.

This exclusion from liability extends for the benefit of any proxies or attorneys of the Trustee.

## **7 ACCOUNTS, AUDIT AND INFORMATION**

### **7.1 Records and accounts**

The Trustee will maintain accounts and records in relation to each Division and Sub-plan and its administration in accordance with Superannuation Law.

### **7.2 Provision of information**

Subject to clause 7.6, the Trustee will provide Members with such information in relation to a Division or Sub-plan as is required by Superannuation Law or as the Trustee otherwise determines.

### **7.3 Annual Statements**

The Trustee will prepare in respect of each year of income those accounts and financial statements required by Superannuation Law.

### **7.4 Audit**

The Trustee will appoint an Auditor and have the Divisions audited in each year of income.

### **7.5 Accounts evidence payment**

- (a) The accounts of a Division or Sub-plan will be sufficient evidence of all payments shown in them to have been made to or for the benefit of any person.
- (b) The receipt of the Trustee for any asset of any kind transferred to it will discharge the person transferring the asset:
  - (i) in respect of any such obligation; and
  - (ii) from being bound to see to the application or being answerable for the loss or misapplication of the asset.

## **7.6 Confidentiality**

Subject to any relevant law, the Trustee is not required to disclose to any person any information relating to an Employer, a Member or a person who has ceased to be an Employer or Member.

## **8 VALUATIONS**

Unless otherwise provided in the Rules, the Trustee will cause all assets of a Division to be valued:

- (a) at least once in each year of income of the Division; and
- (b) at such other dates determined by the Trustee,

by such persons and utilizing such methods as the Trustee may determine.

## **9 LIABILITIES AND INDEMNITIES OF THE TRUSTEE**

### **9.1 Liability for acts or omission**

The Trustee will not be liable to a Division nor to any Member or other person whatsoever for any loss or damage suffered as a result of:

- (a) any act or omission on the part of the Trustee in connection with the Avanteos Superannuation Trust, the Divisions, sub-plans or this Deed other than a fraudulent act or omission or wilful misconduct or dishonesty;
- (b) neglect, fraud, dishonesty or default on the part of any delegate, Actuary, Auditor, accountant, actuary, solicitor, or other agent or advisor engaged by or relied on by the Trustee in good faith; or
- (c) any investment made in good faith.

### **9.2 Discretions and powers of the Trustee**

All authorities, powers and discretions of the Trustee under this Deed may be exercised, or not exercised, at the absolute discretion of the Trustee (unless expressly specified otherwise). The Trustee will not be liable for any loss or damage occurring as a result of:

- (a) the exercise or non-exercise of those powers, discretions and authorities; or
- (b) a failure by the Trustee to carry out any of its duties or obligations by reason of the fact that it has not received sufficient or adequate instructions or information from an Employer, Member or any other person at any time.

### **9.3 Indemnity**

- (a) Subject to Superannuation Law, the Trustee and each director of the Trustee will be indemnified by the relevant Division in respect of any liability incurred while acting as the Trustee of that Division or as director of the Trustee (as the case may be) except where:
  - (i) the liability arises from a breach of trust (in the case of the Trustee) and where the Trustee or director:

- (A) fails to act honestly in a matter concerning the Division or its sub-plans; or
  - (B) intentionally or recklessly fails to exercise, in relation to a matter affecting the Division or its sub-plans, the degree of care and diligence required to be exercised; or
- (ii) the liability is for a monetary penalty under a civil penalty order imposed under the Superannuation Industry (Supervision) Act 1993 and Regulations.
- (b) The Trustee may realise any assets of the relevant Division and its sub-plans (including any insurance policy or any units or interests under any insurance policy) in whole or in part for the purposes of such indemnity.
- (c) For the avoidance of doubt, the above indemnity extends to all legal and other costs, charges and expenses of administering or winding up the relevant Division and otherwise of performing any trusts, powers, authorities and discretions under this Deed.
- (d) The above indemnity is in addition to any other indemnity allowed by law or given under this Deed.
- (e) This clause applies subject to clause 2.7(b).

#### **9.4 Lien**

Subject to Superannuation Law, the Trustee will have a lien on and may dispose of all assets of the Avanteos Superannuation Trust and the Divisions in the hands of the Trustee for the purpose of the indemnity set forth in clause 9.3.

#### **9.5 Information provided to Trustee**

The Trustee is entitled to rely upon information provided to it by:

- (a) an Employer;
- (b) a Member; or
- (c) any other person acting on behalf of an Employer or a Member,

and the Trustee will be indemnified by the Employer or Member who provided the information or on whose behalf the information was provided in relation to any loss, damage or expense incurred by the Trustee arising as a result of any such information proving to be incorrect or misleading.

#### **9.6 Limitation of Trustee's liability**

The Trustee will not be liable to make a payment to a Member, their dependants or legal personal representatives:

- (a) from any Division or Sub-plan other than the Division or Sub-plan to which the Member has been admitted; or
- (b) which exceeds the assets of the Division or Sub-plan to which the Member has been admitted.

## **9.7 Expenses**

- (a) The Trustee is entitled to be reimbursed out of the assets of a Division and each Member's Member Account in respect of any Expenses incurred in relation to the relevant Division, the Member or the Avanteos Superannuation Trust.
- (b) If the Expenses relate to more than one Member, or to more than one Division, the Trustee must apportion the Expenses between Members in the same proportions that each Member's assets bear to the total of all Member assets to which the Expenses relate. Alternatively, the Trustee may determine that some other basis of apportionment will apply. The Trustee may determine the basis on which Expenses are to be apportioned between Members where the Expenses do not relate to any Divisions or any Members in particular.
- (c) Notwithstanding anything contained in this Deed, the Trustee may:
  - (i) realise any asset of the Avanteos Superannuation Trust in whole or in part; and
  - (ii) deduct or set aside provisions from the Avanteos Superannuation Trust,

to meet anticipated expenses or obligations. Such realisation of assets, deduction, setting aside or provision may be made from or against such part of the Avanteos Superannuation Trust (including specific Member Accounts) as the Trustee in its absolute discretion deems appropriate.
- (d) This clause 9.7 applies in addition to any right of the Trustee to receive remuneration, fees, reimbursement or indemnification.

## **10 CHARGES BY THE TRUSTEE**

### **10.1 Categories of Charges**

Subject to this clause 10 and the Superannuation Law, the Trustee may levy the following charges by debiting the relevant Member's Member Account:

- (a) Benefit Charge;
- (b) Adviser Service Charge;
- (c) Investment Charge;
- (d) Switching Charge;
- (e) Administration Charge;
- (f) Ongoing Charge;
- (g) Exit Charge; and
- (h) Insurance Charge,

on a basis and at times specified in any relevant Disclosure Document or as otherwise determined by the Trustee provided that any proposed increase to that specified in the Disclosure Document will be notified to Members at least 30 days prior to the effective date of the increase.

## 10.2 Benefit Charge

A Benefit Charge in respect of a Member must not exceed 10% of the amount of the Benefit to which the Benefit Charge relates, or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days notice to the Member.

## 10.3 Adviser Service Charge

Without limiting clause 10A, a Member and an adviser of that Member may agree that a charge or fee for adviser services in relation to the Member's interest in the relevant Division (**Adviser Service Charge**) may be made in respect of the Member, but this amount must not exceed an amount which is equivalent to 10% of the aggregate amount of the Member's Contributions in a year of income, or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days' notice to the Member.

The Trustee may specify (in a manner provided for in paragraph (a) or (b) above):

- (c) two or more alternative amounts or percentages which might apply and the circumstances in which they will apply; and
- (d) the times at which the Adviser Service Charge is calculated and deducted.

## 10.4 Investment Charge

An Investment Charge in respect of a Member must not exceed 10% of the amount of the investment to which the Investment Charge relates, or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days notice to the Member.

## 10.5 Switching Charge

A Switching Charge in respect of a Member must not exceed 10% of the value of that part of a Member's Member Account which is switched from one investment strategy to another, or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days notice to the Member.

## 10.6 Administration Charge

The total Administration Charges in respect of a Member must not in any year of the relevant Division exceed 10% of the average balance of the Member's

Member Account over the year (calculated on the last day of each month), or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days notice to the Member.

#### **10.7 Ongoing Charge**

The total Ongoing Charges in respect of a Member must not in any year of the relevant Division exceed 10% of the average balance of the Member's Member Account over the year (calculated on the last day of each month), or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days notice to the Member.

#### **10.8 Exit Charge**

An Exit Charge in respect of a Member must not exceed 10% of the amount of the withdrawal from or payment out of the relevant Division to which the Exit Charge relates or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days notice to the Member.

The Trustee may specify (in a manner provided for in paragraphs (a) or (b) above) an alternative manner of calculating the Exit Charge which adds any deferred Adviser Service Charge which has not yet been charged to the Member to the amount or percentage which is otherwise specified pursuant to paragraphs (a) or (b) above.

#### **10.9 Insurance Charge**

An Insurance Charge in respect of a Member must not, in any particular year, exceed 30% of the total amount of insurance premiums payable (if any) by the Member in that year in respect of Insured Benefits, or such lesser amount or percentage as may be specified:

- (a) in the Disclosure Document pursuant to which the Member became a Member; or
- (b) by the Trustee by giving at least 30 days notice to the Member.

#### **10.10 Indexation of charges levied by the Trustee and fees related to advice**

Where specified in the Disclosure Document pursuant to which the Member became a Member or by the Trustee giving at least 30 days' notice to the Member, a charge or fee under clause 10 or clause 10A may on and from each 1 July after the date of the original deed, being 9 July 2002 increase by:

CPI 2  
CPI 1

where:

**CPI 1** is the Consumer Price Index last published before the beginning of the previous year ending 30 June;

**CPI 2** is the Consumer Price Index last published before that 1 July.

However, the rate for any Financial Year is not to be less than that for the previous Financial Year.

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## **10A ADVICE FEES**

A Member may agree to pay, by way of debit to the Member's Member Account, one or more of the following fees related to advice:

- (a) an ongoing percentage based fee charged on the average balance of the Member Account over the year, calculated at such intervals as the Trustee may determine;
- (b) an ongoing dollar based fee;
- (c) a fixed dollar fee for specific advice,

as may be specified in the Disclosure Document pursuant to which the Member became a Member or by the Trustee giving at least 30 days notice to the Member.

## **11 MEMBERSHIP**

### **11.1 Applications for membership**

A person may become a Member of a Division or Sub-plan if the person:

- (a) makes an application for membership which is in a form acceptable to the Trustee; and
- (b) provides the Trustee with any other information or details which are requested by the Trustee in connection with the Avanteos Superannuation Trust and the relevant Division or Sub-plan.

Subject to Superannuation Law, the Trustee may accept an application for membership which is made on behalf of the proposed Member by an Employer who has been admitted as a Participating Employer in relation to the relevant Division or Sub-plan.

### **11.2 Acceptance and rejection of applications**

- (a) The Trustee may accept or reject an application for membership in its absolute discretion and is not required to give details of its reasons for accepting or rejecting any particular application.
- (b) The Trustee must notify the applicant or Participating Employer (as the case may be) as to whether or not the application has been accepted or rejected within a period determined by the Trustee.
- (c) Failure to notify an applicant or Participating Employer in accordance with this clause is a deemed rejection, unless the Trustee decides otherwise.

### **11.3 Transferring into the Avanteos Superannuation Trust**

Subject to complying with Superannuation Law, the Trustee may make arrangements with:

- (a) a Member;
- (b) any previous employer of a Member;
- (c) the trustee or provider of any Eligible Fund of which the Member was or is a member; or
- (d) the issuer of:
  - (i) any policy of insurance for the Member; or
  - (ii) an annuity held by the Member,

to transfer money or other assets to a Division and may proceed with any transfers pursuant to any such arrangements. Any such transfer may be subject to such terms as may be required by or acceptable to the Trustee. A reference in this clause to a "Member" includes a person who becomes a Member as a consequence of the transfer of money or assets.

### **11.4 Value of transfer**

The value of any transfers made under clause 11.3 must be determined by the Trustee on a basis agreed with the person with whom the arrangements were made.

### **11.5 Transfer to a successor fund or an eligible rollover fund**

The Trustee may transfer an amount or assets representing all or part of a Member's Member Account to:

- (a) a successor fund if the Trustee enters into an agreement or arrangement with the trustee of the successor fund; or
- (b) an eligible rollover fund or other Eligible Fund,

subject to Superannuation Law.

### **11.6 Categories of Membership**

The Trustee may:

- (a) establish different categories of Members within a Division or Sub-Plan or sub-categories within a category;
- (b) determine that certain parts of this Deed and the Rules do not apply to Members within a particular category;
- (c) close any category; or
- (d) by resolution or by prescribing Rules:
  - (i) set specifications for a category, relating to the category name, benefits, contributions, investments, investment strategies or any other features or terms and conditions of any type (**Specifications**); and

- (ii) amend the Specifications relating to any category at any time. The Trustee may not make any Amendment so as to adversely alter a beneficiary's right or claim to accrued Benefits or the amount of those accrued Benefits, unless permitted by Superannuation Law. The Trustee may rely on the advice of the Actuary as to whether any proposed Amendment will have such an adverse effect.

### **11.7 Cessation of membership**

Unless otherwise provided in the Rules, a Member will cease to be a Member of the relevant Division or Sub-plan upon the earlier of:

- (a) the payment of the whole of the Member's Benefit to or in respect of the Member;
- (b) the transfer of the whole of the Member's Benefit to another Eligible Fund or successor fund in accordance with clause 11.5;
- (c) the payment of part of the Member's Benefit to or in respect of a Member and the transfer of the balance of the Member's Benefit to another Eligible Fund or successor fund in accordance with clause 11.5; or
- (d) the Member ceasing to be entitled to a Benefit.

### **11.8 Member to provide information**

Upon the request of the Trustee, a Member or other person to whom a Benefit may become payable must provide the Trustee (or a person nominated by the Trustee) with information relating to:

- (a) the Member or that person;
- (b) the Member's membership of any other Eligible Fund or like fund or annuity; or
- (c) any other information required by the Trustee.

The Trustee may require a Member to undergo a medical examination by a medical practitioner nominated by the Trustee.

## **12 CONTRIBUTIONS**

### **12.1 Rules for each Division**

Contributions to a Division by a Member, Participating Employer (if any) or other person permitted to make Contributions under Superannuation Law must be made in accordance with this Deed and the Rules of the relevant Division or Sub-plan.

### **12.2 Payment**

Contributions to a Division or Sub-plan must be paid to the Trustee:

- (a) on terms (including minimum amounts) specified by the Trustee; and
- (b) within the time limit prescribed by Superannuation Law.

### **12.3 Form of payment**

Subject to Superannuation Law, the Trustee may agree to accept a transfer of any benefit or asset (including insurance policies) to the relevant Division or Sub-plan in lieu of Contributions on terms acceptable to the Trustee.

## **13 INSURANCE**

### **13.1 Benefits**

- (a) The Trustee may effect Insurance Policies in respect of any Benefits which may be payable under or contemplated by the Divisions or Sub-plans. The Trustee may also accept an assignment of any such Insurance Policies or discontinue or surrender such Insurance Policies.
- (b) An Insurance Policy effected pursuant to this clause may relate to more than one Member.
- (c) If the Trustee is unable to obtain insurance in respect of Member Benefits on terms and at a premium acceptable to the Trustee, the Trustee may adjust the level of Benefits payable in respect of the relevant Member to reflect:
  - (i) the extent to which insurance cannot be obtained; or
  - (ii) the premium which the Trustee was required to pay.

However, the Trustee must not adjust the level of Benefits if the Member (or their employer) pays any part of the premium which the Trustee is unwilling to pay to effect the insurance.

- (d) The Trustee may reduce the amount of the Benefit otherwise payable to the Member if:
  - (i) a Member's Benefits have been insured; and
  - (ii) the relevant Insurer refuses to pay any part of the Insured Benefits upon the Member becoming entitled to receive those Benefits under this Deed,by the amount which the Insurer refuses to pay.
- (e) The Trustee must notify a Member (and their Participating Employer, if any) if the Trustee varies the Benefits of the Member pursuant to this clause.

### **13.2 Investments**

The Trustee may effect insurance in respect of the investments of a Division or Sub-plan on such terms as it thinks fit.

## **14 BENEFITS**

### **14.1 Compliance with Superannuation Law**

The payment of Benefits will be subject to any applicable Preservation Requirements and the Trustee will not be required to pay a Benefit to a Member, dependant, legal personal representative or any other person otherwise than in accordance with Superannuation Law.

#### **14.1A Payment of Benefits to UK tax relief Members**

- (a) Notwithstanding any other clause under this Deed or any of the Rules, the Trustee is not required to pay a Benefit to a Member if the following apply:
  - (i) the Benefit is to be paid from any amount that has been transferred to the Trustee in respect of that Member from any pension scheme which received UK tax relief on contributions received for that Member; and
  - (ii) the Trustee determines there are requirements with which the Fund ought to comply in order to be a Qualifying Recognised Overseas Pension Scheme (**QROPS**); and
  - (iii) payment of the Benefit would result in the Fund ceasing to be a QROPS.
- (b) For the purposes of clause 14.1A(a)(ii), a requirement includes any restriction on the payments by a QROPS including any pension age test requiring that UK tax relieved funds may not be paid before the Member has turned 55 or retires due to an ill-health condition.
- (c) A Member who has had amounts transferred (or who transfers amounts) to the Trustee from any pension scheme which received UK tax relief on contributions received for that Member must not make any election regarding the release or cashing of any amount from the Fund which would cause the Fund to cease to be a QROPS.

#### **14.2 Compulsory payment of Benefits**

Notwithstanding any provision in the Rules, the Trustee may pay any Benefit which is required under Superannuation Law to be paid to or in respect of a Member or reversionary pensioner (less any deduction that is required to be made in respect of any Taxes).

#### **14.3 Treatment of preserved Benefits**

If any Benefit (or part thereof) otherwise payable to a Member is unable to be paid by reason of Preservation Requirements, the Benefit may be transferred to another Eligible Fund approved by the Trustee.

#### **14.4 Payment of Benefits**

The Trustee may pay a Benefit to or in respect of a Member by way of lump sum, pension or by purchase of an annuity and otherwise in accordance with the Rules applicable to the Member.

#### **14.5 Nominating dependants: non-binding**

- (a) A Member may at any time:
    - (i) nominate a dependant to receive any Benefit payable on the Member's death; and
    - (ii) specify the proportions and manner in which the Benefit referred to in (i) is to be paid,
- in a manner acceptable to the Trustee.

- (b) A Member may vary any nomination or specification given under paragraph (a) in a manner acceptable to the Trustee.
- (c) A nomination made under this clause 14.5 is not binding on the Trustee. However, the Trustee may consider a nomination when exercising discretions granted to it under the Rules of a Division.

#### **14.6 Binding Nomination**

A Member cannot give the Trustee a Binding Nomination, or amend or confirm a current Binding Nomination, on and from 1 July 2013. A valid Binding Nomination given to the Trustee by a Member on or before 30 June 2013 ceases to be binding on the Trustee on the earliest of the following:

- (a) when the Binding Nomination is revoked by the Member;
- (b) when the Trustee consents under clause 14.7A(2) to a Non-Lapsing Nomination given by the Member to the Trustee; or
- (c) when the Binding Nomination expires under Superannuation Law.

If:

- (a) a Member entitled to a pension has given a Binding Nomination in relation to that pension; and
- (b) the Member later gives the Trustee a nomination made under clause 14.5 or clause 14.7 in relation to that pension,

the Binding Nomination will be revoked.

#### **14.7 Binding nomination of reversionary pensioner**

- (a) Subject to Superannuation Law,
  - (i) a Member may at any time nominate a dependant to receive any reversionary pension payable on the Member's death (in a manner acceptable to the Trustee); and
  - (ii) revoke a nomination made in accordance with paragraph (a).
- (b) The Trustee must, subject to Superannuation Law, deal with a pension in accordance with any nomination made pursuant to paragraph (a) which has not been revoked.

#### **14.7A Non-Lapsing Nominations**

14.7A(1) The Trustee may offer the right to give a Non-Lapsing Nomination, or to revoke an Accepted Non-Lapsing Nomination, to:

- (a) any Member;
- (b) any group of Members;
- (c) Members of a Division, sub-plan or category; or
- (d) Members of the Fund generally.

14.7A(2) The Trustee may give its consent to a Member's Non-Lapsing Nomination (or revocation of an Accepted Non-Lapsing Nomination) and, to the extent

permitted by Superannuation Law, will give its consent if the Non-Lapsing Nomination (or revocation of an Accepted Non-Lapsing Nomination) complies with such requirements as to form and such instructions, guidelines or criteria as the Trustee considers appropriate.

- 14.7A(3) For the purposes of clause 14.7A(2), when formulating the requirements as to form, or the instructions, guidelines or criteria referred to in that clause, the Trustee is not required to consider the identity, circumstances of, or other criteria relating to, a person or persons who may be nominated by a Member in a Non-Lapsing Nomination, other than considering the requirement that the person or persons nominated must be a dependant of the Member and/or the legal personal representative of the Member.
- 14.7A(4) For the purposes of clause 14.7A(2), the Trustee is:
- (a) not required to consider the identity, circumstances of, or other criteria relating to, the person or persons nominated by a Member in a Non-Lapsing Nomination:
    - (i) when considering whether to consent to, or withhold consent to, the Non-Lapsing Nomination, other than considering whether the nominated person or persons is/are an Eligible Person; and
    - (ii) when considering whether to consent to the revocation of an Accepted Non-Lapsing Nomination; and
  - (b) required to, and can only, consider whether the Non-Lapsing Nomination (or revocation of an Accepted Non-Lapsing Nomination) complies with the requirements as to form, instructions, guidelines or criteria referred to in clause 14.7A(2).
- 14.7A(5) If the Trustee gives its consent under clause 14.7A(2) to a Member's Non-Lapsing Nomination (or a revocation of an Accepted Non-Lapsing Nomination), the Accepted Non-Lapsing Nomination (or revocation of an Accepted Non-Lapsing Nomination) is binding on the Trustee from the date of the Trustee's consent. If the Member dies prior to the Trustee giving its consent to the Member's Non-Lapsing Nomination (or revocation of an Accepted Non-Lapsing Nomination) under clause 14.7A(2), then no such consent can be given by the Trustee.
- 14.7A(6) A Member's Accepted Non-Lapsing Nomination remains binding on the Trustee until the earliest of the following:
- (a) the Member revokes the Accepted Non-Lapsing Nomination and the Trustee consents to the revocation of the Accepted Non-Lapsing Nomination in accordance with clause 14.7A(2);
  - (b) the Trustee consents in accordance with clause 14.7A(2) to a new Non-Lapsing Nomination given by the Member to the Trustee; or
  - (c) any other circumstance, which the Trustee may determine from time to time, that occurs in relation to the Member.
- If:
- (d) in relation to a Member entitled to be paid a pension, the Trustee holds a current Accepted Non-Lapsing Nomination in relation to that pension; and

- (e) the Member gives the Trustee a nomination made under clause 14.5 or clause 14.7 in relation to that pension,

the Accepted Non-Lapsing Nomination will be revoked in relation to that pension.

#### **14.7B Binding Nominations and Accepted Non-Lapsing Nominations**

14.7B(1) If at any time the Trustee considers that a Binding Nomination or an Accepted Non-Lapsing Nomination:

- (a) is not sufficiently clear to allow the Trustee to pay a Benefit according to the nomination; or
- (b) is not consistent with Superannuation Law,

the Trustee may refuse to consent to it or give effect to it.

14.7B(2) If a Benefit is payable in respect of a Member and the Trustee holds a Binding Nomination for that Benefit:

- (a) if the Binding Nomination remains valid, the Trustee must follow the nomination; and
- (b) if any part of the Binding Nomination cannot be followed for any reason (including because it does not comply with Superannuation Law), then the Trustee must deal with the Benefit as if the Binding Nomination had not been given.

14.7B(3) If a Benefit is payable in respect of a Member and the Trustee holds an accepted Non-Lapsing Nomination for that Benefit:

- (a) if, and to the extent that, the Accepted Non-Lapsing Nomination remains valid, the Trustee must follow the nomination;
- (b) if any dependant nominated in an Accepted Non-Lapsing Nomination dies or otherwise ceases to be a dependant prior to the Member's death, that portion of the Member's Benefit which would have been payable to that nominated dependant must instead be paid to the legal personal representative of the Member (or if there is no legal personal representative, to any other person as the Trustee determines appropriate), and the Trustee must otherwise follow the Accepted Non-Lapsing Nomination;
- (c) if the Trustee determines that any part of the Accepted Non-Lapsing Nomination cannot be followed for any reason then the Trustee must pay the portion of the Benefit to which that part relates to the legal personal representative of the Member (or if there is no legal personal representative, to any other person as the Trustee determines appropriate), and the Trustee must otherwise follow the Accepted Non-Lapsing Nomination; and
- (d) if the whole of the Accepted Non-Lapsing Nomination cannot be followed for any reason then the Trustee must deal with the Benefit as if the Accepted Non-Lapsing Nominated were not held by the Trustee.

14.7B(4) Without limiting the effect of clauses 9.1, 9.2 or 9.3, the Trustee is discharged from any liability to, or claim by, any person whatsoever in respect of a Member's Benefit if:

- (a) the Trustee pays the Member's Benefit in accordance with the Member's Binding Nomination or Accepted Non-Lapsing Nomination; or
- (b) the Trustee does not pay the Benefit in accordance with the Member's Binding Nomination or Accepted Non-Lapsing Nomination and the Trustee reasonably believes that the Binding Nomination or Accepted Non-Lapsing Nomination was revoked by the Member, or that it was inconsistent with Superannuation Law or not sufficiently clear to allow the Trustee to pay the Benefit according to the nomination, or that it otherwise ceased to be valid.

14.7B(5) If, after making reasonable enquiries, the Trustee determines that there is no valid or current nomination made under clause 14.5 or clause 14.7, or Binding Nomination or Accepted Non-Lapsing Nomination in force in respect of a Member's pension at the time of the Member's death, the Trustee must pay the Benefit in relation to that pension to the Member's legal personal representative unless, the person nominated as reversionary beneficiary, requests of the Trustee that the Death Benefit be paid as a lump sum, pension or in any other manner, as it considers appropriate and in accordance with Superannuation Law.

If there is no legal personal representative, then the Benefit may be paid to any other person whom the Trustee considers appropriate. The Trustee may determine that a Benefit be paid as lump sum, pension or in any other manner, as it considers appropriate.

#### **14.7C Death benefit nominations provided to the trustee of a transferor fund**

Notwithstanding the other provisions of this Deed, where a Member is a Member of the Fund as a result of a successor fund transfer (as defined under Superannuation Law), the Trustee may pay the Member's death benefit in accordance with a valid non-lapsing binding nomination provided to the trustee of the transferor fund if the Trustee is satisfied that the Member was informed before the transfer that the Trustee may act on that nomination unless the Member notifies the Trustee that they wish to withdraw that nomination, which can include by providing the Trustee with a Non-Lapsing Nomination under clause 14.7A.

#### **14.7D Binding nominations and successor fund transfers**

Where a Member becomes a member of the Fund as a result of a successor fund transfer, the Trustee may pay a death benefit in accordance with a valid and binding death benefit nomination provided by the Member to the trustee of the transferor fund if the Trustee is reasonably satisfied that the Member was informed before the transfer that the Trustee may act on that nomination, unless the Member notifies the Trustee that they wish to withdraw that nomination or provides a binding nomination of a reversionary pension under Clause 14.7 or a Non-Lapsing Nomination under Clause 14.7A.

#### **14.8 Place and manner of payment**

- (a) Subject to this Deed, Benefits will be payable at the place and in the manner as determined by the Trustee. The Trustee may make payment by cheque, or cause an Insurer to draw and pay by cheque on behalf of the Trustee, and the Trustee or Insurer may mail the cheque to the payee at the last address known to the Trustee of that payee.
- (b) Notwithstanding any other provision of this Deed, a Member shall not be entitled to be paid a Benefit until the Trustee has:

- (i) in the case of clause 14.2, determined to pay a Benefit; or
- (ii) in any other case, received a claim from an Employer or Member (as the case may be) together with such other information as the Trustee may require,

and in the case where any Insured Benefit is payable, the Insurer under an Insurance Policy has determined to accept and pay the claim.

#### **14.9 Proofs**

Whenever it is necessary for the Trustee to decide questions of fact the Trustee may act upon such proofs or presumptions as it considers satisfactory whether or not they are strictly legal proofs or legal presumptions.

#### **14.10 Payment of Benefit conditional upon evidence**

The Trustee may suspend payment of a Benefit until all information and evidence required by the Trustee is received from the Employer, the Member or the person to whom the Benefit is to be paid.

#### **14.11 Discharge of Trustee**

The receipt of a person or Eligible Fund to whom a Benefit is paid or transferred will absolutely discharge the Trustee in respect of the Benefit paid to that person and the Trustee will not be bound to see to the application of that Benefit.

#### **14.12 Legal disability of person**

Subject to Superannuation Law, if an amount is payable to or for the benefit of a person (**beneficiary**) and the beneficiary is in the opinion of the Trustee:

- (a) under any legal disability or incapacity; or
- (b) suffering from any physical or mental sickness, injury or infirmity which the Trustee considers renders the relevant person unable to manage their affairs properly,

the Trustee may at its discretion (upon obtaining such evidence as the Trustee may require):

- (c) suspend the beneficiary's right to receive such payment; and
- (d) apply the whole or such part of the proposed payment:
  - (i) towards the beneficiary's maintenance, education, advancement or benefit; or
  - (ii) for the general benefit of the beneficiary to any person purporting:
    - (A) to be a dependant, parent, trustee, representative or guardian of the beneficiary; or
    - (B) to have the care or custody (or financial expense of that care or custody) of the beneficiary,

and the receipt of that payment by a person to whom payment is made under this clause 14.12(d) will be a good and full discharge to the Trustee.

#### **14.13 Claim for Benefits**

Upon the Trustee being satisfied that a claim for an Insured Benefit has arisen, the Trustee shall, as soon as practicable, lodge a claim with the Insurer in relation to that Member. The Trustee will:

- (a) promptly pay any Insured Benefit to or in respect of the Member upon receipt from the Insurer; or
- (b) cause the Insurer to pay the Benefit to or in respect of the Member.

#### **14.14 Notice of claim**

A Member must promptly advise the Trustee of any event which would entitle a Member to receive a Benefit in such form as is required by the Trustee.

#### **14.15 Unclaimed moneys**

If:

- (a) the Trustee determines that, under the Rules, the Member is entitled to be paid a Benefit from a Division;
- (b) the Member has not applied to the Trustee to have the Benefit paid to the Member; and
- (c) the Trustee is unable to pay the Benefits to the Member because the Trustee, after making reasonable efforts to find the Member, is unable to find the Member,

the Benefit of the Member is unclaimed moneys and may be dealt with by the Trustee in accordance with Superannuation Law.

#### **14.16 Trustee may require proof**

The Trustee may require a Member to provide evidence to the Trustee's satisfaction that is relevant to determining whether the Trustee is able or may be obliged to pay a Benefit to a Member in accordance with Superannuation Law. If Superannuation Law requires payment of a Benefit and the Trustee cannot be satisfied that the Benefit is not payable then the Trustee may pay the Benefit to the Member as if the Member had become entitled to it on the date of payment.

#### **14.17 Deferral of Benefit payment**

If the Trustee must realise any assets of a Division in order to pay a Benefit, the Trustee may delay payment of the Benefit for such period as the Trustee sees fit in order to facilitate the orderly realisation of those assets.

#### **14.18 Maximum liability of Trustee**

Notwithstanding any other provision of this Deed or the Rules, the Trustee will not be required to make any payment from a Division in excess of the net realisable value of the assets of the Division.

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## **14A BENEFIT SPLITTING AND FLAGGING ARRANGEMENTS**

### **14A.1 Application**

Subject to clause 14A.2, this clause 14A will apply in respect of a Member and their spouse if they are (or have been) legally married to each other or are otherwise subject to the jurisdiction of the Family Court under the Family Law Act 1975 (Cth) and:

- (a) a superannuation agreement (which provides for a payment flag or a payment split) or a flag lifting agreement has been entered into by the Member and their spouse and such agreement has taken effect; or
- (b) a splitting order or a flagging order has been made by a court of competent jurisdiction in respect of the Member and their spouse.

### **14A.2 Trustee may require Member and spouse to provide details**

A Member and/or their spouse must provide such information, declarations, proofs, documents and payments as the Trustee may require under Superannuation Law. The Trustee may determine that this clause 14A will not apply in respect of a Member and their spouse if the requirements of this clause 14A.2 have not been complied with to the satisfaction of the Trustee.

### **14A.3 Definitions**

Terms used in this clause 14A will have the same meanings as they do under Superannuation Law.

### **14A.4 Non-member spouses not to remain in Fund**

If the interest of a Member is to be split while the interest is in the growth phase:

- (a) the entitlement of their spouse is not to be retained in the Avanteos Superannuation Trust (unless the spouse is or becomes a Member pursuant to other provisions of this Deed); and
- (b) assets representing the entitlement of the spouse are to be paid to the spouse, transferred to another Eligible Fund (or, if the spouse is a Member, to an account maintained in respect of the spouse) in accordance with Superannuation Law.

The Trustee may determine the assets which are to be paid or transferred under paragraph (b) above, notwithstanding any direction given by the Member under clause 6.

### **14A.5 Cessation of Benefits**

Notwithstanding any other provision of this Deed or the Rules, the Trustee is not required to pay any amount in respect of a Member if any part of that amount is a splittable payment which is subject to a flagging order or a payment flag. The Trustee will deal with such amounts in accordance with, and has power to take such steps as may be required by, this clause 14A and Superannuation Law.

### **14A.6 Calculation of Benefits**

The Trustee may:

- (a) adjust the Benefits payable and Member Account balances in respect of a Member;
- (b) calculate the entitlement of the Member's spouse; and
- (c) determine the preserved, unrestricted non-preserved and restricted non-preserved components of the Benefits of the Member and the entitlement of their spouse,

in accordance with any relevant superannuation agreement, flag lifting agreement, court order and Superannuation Law.

#### **14A.7 Commutations**

Notwithstanding any other provision of this Deed, the Trustee may at any time commute a pension payable in respect of a Member in whole or in part in circumstances where such commutation is expressly or impliedly required under Superannuation Law. For the avoidance of doubt, the provisions of this Deed relating to the commutation of the relevant pension will apply for the purposes of any such commutation.

#### **14A.8 Provision of information**

The Trustee may:

- (a) provide information relating to the Benefits and interests of the Member and/or their spouse;
- (b) require charges to be paid in connection with, and prior to, the provision of such information,

in accordance with Superannuation Law (even if clauses 14A.1(a) and (b) have not been satisfied).

#### **14A.9 Costs and expenses**

Subject to Superannuation Law, the Trustee may at its discretion allocate any costs and expenses incurred in connection with the application and administration of this clause 14A between the Member and their spouse on a basis determined by the Trustee.

### **15 FRAUD BY MEMBER**

Subject to Superannuation Law, if a Member is a party or privy to any defalcation or fraud in respect of a Division, the amount representing the Member's interest in the Division will be applied:

- (a) to make good the defalcation or fraud; and
- (b) to meet any costs or losses (including the costs of any prosecution or civil proceedings) which are incurred by the Trustee and which arise out of the defalcation or fraud,

and the Member's Benefit will be reduced accordingly.

## **16 TAXATION**

### **16.1 Payment of tax**

The Trustee will pay such Taxes or instalments thereof in respect of a Division as may be determined pursuant to the provisions of the Income Tax Acts and the Trustee may:

- (a) allocate the Taxes among Member Accounts;
- (b) establish accounts for providing for Taxes or reserves for Taxes; and
- (c) realise any asset of the Division (including any Insurance Policy, or units or interests under any Insurance Policy) allocated to those Member Accounts or other accounts for the purpose of meeting its liability under this clause.

### **16.2 Provision for tax**

Notwithstanding any provision of this Deed, the Trustee may from time to time deduct, set aside and make a provision from a Division for such Tax as it estimates will be payable by the Division. The Trustee will be entitled to have regard to the unrealised capital gains accrued on the investments of the Division (or any part thereof) and any other matter or thing which the Trustee considers appropriate. The Trustee may transfer amounts from any Member Accounts to accounts established for the purpose of providing for Taxes or reserves for Taxes.

### **16.3 Taxation credits or rebates**

Subject to the Income Tax Acts, where the Trustee is in receipt of any income in respect of which there arises any taxation credit or rebate (whether in the nature of an imputation credit or rebate, foreign tax credit pursuant to the Tax Act or otherwise) the Trustee will be entitled in its absolute discretion:

- (a) to offset such credits or rebates against any provisions for Tax; and
- (b) notwithstanding the time at which such credits or rebates are received, to apportion such credits or rebates across the relevant year of income for the purposes of the Income Tax Acts as the Trustee thinks fit,

or otherwise deal with, allocate or apply such credits or rebates in any manner considered by the Trustee to be in the best interests of the Members as a whole.

### **16.4 Adjustments**

- (a) The Trustee will:
  - (i) pay Taxes for a Division as determined pursuant to the Income Tax Acts; and
  - (ii) in respect of the amounts of such payments, debit the provisions for Taxes made pursuant to this Deed (if any).
- (b) If the provisions for Taxes made in respect of any year of income exceed the Taxes payable in respect of that year of income, the Trustee may credit the provisions for Taxes in respect of the next succeeding year of income with part or all of the excess amount or otherwise deal with the excess amount as it considers equitable.

- (c) If the provisions for Taxes made in respect of any year of income are less than the amount of Taxes payable in respect of that year of income, the Trustee may debit an amount equal to the shortfall from the provisions for Taxes in respect of the next succeeding year of income.

## **16.5 Determination by Trustee**

Notwithstanding anything contained in this Deed the Trustee may in its absolute discretion determine:

- (a) whether any amount received or receivable is or is to be received on capital or income account, or whether any outgoing, loss, expense, provision or amount is incurred on capital or income account;
- (b) whether a capital profit or loss has been realised;
- (c) the amount of any realised or unrealised capital profit or loss;
- (d) the amount of any consideration received on the disposal of a part of a Division;
- (e) the amount paid or deemed paid or the value given for a part of a Division at the time it became part of the Division; or
- (f) whether any Tax is payable and, if so, the amount payable,

and every such determination will be final and conclusive.

## **16.6 Arrangements with other entities**

The Trustee may enter into an arrangement with an insurer under an Insurance Policy or a pooled superannuation trust or any other appropriate entity which has the effect of transferring to that entity all or part of the liability for Tax of a Division.

## **16.7 Payment of greater amount**

The Trustee may pay an amount greater than the Benefit to which a Member is entitled in circumstances where the payment of such greater amount results in the securing or better securing of relief from Tax of any income of a Division (including Contributions to the Division) or of the greater amount.

## **16.8 Liability of Trustee**

The Trustee will not be liable for any loss or damage resulting from the exercise of any of the Trustee's discretions, powers or determinations under this Deed relating to Tax notwithstanding any error or miscalculation in any provision made for Tax.

## **17 [Deleted]**

## **18 AMENDMENT OF TRUST DEED**

### **18.1 Amendments**

Subject to clause 18.2, the Trustee may Amend all or any of the provisions contained in this Deed (including this clause 18.1) by executing a deed of amendment. Any such Amendment:

- (a) will take effect on and from the date of the deed of amendment unless an effective date is specified; and
- (b) may be retrospective.

## **18.2 Amendment not to reduce Benefits**

The Trustee may not Amend the provisions of this Deed so as to alter adversely a beneficiary's right or claim to accrued Benefits, or the amount of those accrued Benefits, unless such an Amendment is permitted by Superannuation Law. The Trustee may rely on the advice of the Actuary as to whether any proposed Amendment will have such an adverse effect.

# **19 TERMINATION AND WINDING-UP**

## **19.1 Circumstances in which a Division may be terminated**

A Division will terminate and be wound up if:

- (a) the Trustee determines that the relevant Division is to be terminated; or
- (b) the Members of that Division resolve by Special Resolution that the Division be wound up.

If such a determination has been made or Special Resolution passed, the Trustee must give notice to all Members concerned that the Division will commence to be wound up on a date specified in the notice.

## **19.2 Consequences of termination**

On and from the Termination Date:

- (a) no further persons will be admitted to Membership of the relevant Division; and
- (b) the Trustee will not accept any further Contributions to the relevant Division (other than those due on or prior to the Termination Date) and all outstanding Contributions must be paid promptly.

## **19.3 Trustee to make provisions upon termination**

Upon termination of a Division, the Trustee will make such provision out of the assets of the relevant Division as is necessary to provide for the following in the following order of priority:

- (a) Tax, whether or not assessed or presently payable;
- (b) anticipated costs, expenses and liabilities of the relevant Division, including those incurred or to be incurred by the Trustee in connection with the termination of the Division; and
- (c) Benefits which became payable prior to the Termination Date.

## **19.4 Assets to be realised following termination**

- (a) Subject to clause 19.4(c), the Trustee must, so far as reasonably practicable and subject to clause 19.3, sell, call in, and realise the assets and investments of the relevant Division within six months of the Termination Date.

- (b) The Trustee may postpone the sale, calling in or realisation of investments if it considers it to be in the interests of Members. The Trustee will not be responsible for any loss attributable to any such postponement.
- (c) The Trustee may determine not to sell, call in or realise assets and investments if a distribution under clause 19.5(c) would, in the opinion of the Trustee, be in the best interests of the Members concerned.

#### **19.5 Distribution**

- (a) Subsequent to realising investments in accordance with clause 19.4, the Trustee must distribute the assets of the relevant Division to the Members by crediting the relevant Member Accounts.
- (b) The assets referred to in paragraph (a) must be distributed between Members in the proportions that the balances of each Member's Member Account bear to the total held for the relevant Division at the date of the distribution.
- (c) If any investments of the relevant Division are not realised, the Trustee may make in specie distributions wholly or partly in lieu of the amounts referred to in paragraph (a).

#### **19.6 Cashing restriction**

- (a) If the balance of a Member's Member Account following the distribution referred to in clause 19.5(a) is subject to Preservation Requirements, the Trustee must:
  - (i) notify the relevant Member; and
  - (ii) request that the relevant Member nominate (within one month of receipt of notice from the Trustee) an Eligible Fund to which the preserved component of the proceeds are to be transferred or applied.

Upon receiving a nomination, the Trustee may act in accordance with that nomination and this Deed.

- (b) To the extent that balance of a Member's Member Account following the distribution referred to in clause 19.5(a) is not subject to Preservation Requirements, the Trustee may pay the non-preserved component to or at the direction of the relevant Member.
- (c) The Trustee must use its best endeavours to obtain a nomination referred to in paragraph (a). If the Trustee does not receive or is unable to obtain a nomination, the Trustee may deal with the distribution in the manner required by Superannuation Law.

#### **19.7 Final statement to Members**

Once all distributions, payments and transfers under this clause have been made, the Trustee must send a statement to each Member concerned which contains details of the following:

- (a) the sale, calling in and realisation of investments;
- (b) all outgoings;
- (c) provisions retained under clause 19.3; and

- (d) the calculation of the net proceeds payable to Members.

## **20 SUPERANNUATION LAW AND OTHER PRUDENTIAL REQUIREMENTS**

### **20.1 Paramountcy of Superannuation Law and this clause**

- (a) The whole of the Deed operates subject to this clause 20.
- (b) The whole of the Deed and provisions contained herein are subject to Superannuation Law. If there is any inconsistency between the provisions of this Deed and Superannuation Law, the requirements of Superannuation Law prevail.
- (c) The Trustee has power to do anything which may be required to be done by Superannuation Law.
- (d) The Trustee must not do anything which would (or would in its opinion) contravene Superannuation Law even if the Trustee would otherwise have power under the Deed to do that thing.
- (e) The Trustee has power to comply with:
  - (i) any directions, administrative guidelines, rulings or determinations made or laid down by any Superannuation Authority; and
  - (ii) statements by the government of the Commonwealth of Australia or any State or Territory (as the case may be) advising changes or proposed changes to Superannuation Law.

### **20.2 Election to be subject to Superannuation Law**

The Trustee may, where permitted by Superannuation Law, elect that Superannuation Law is to apply in relation to a Division. An election may be made pursuant to this clause even though the election may be irrevocable.

### **20.3 Provisions deemed to be included by Superannuation Law**

Any provision of Superannuation Law that is required to be included in this Deed:

- (a) for a Division to be (or remain) a complying superannuation fund; or
- (b) for a Division to comply with or satisfy other requirements of Superannuation Law,

is deemed to be included in this Deed:

- (c) on and from the date that the provision is required to be so included; and
- (d) until such date that the provision ceases to be required to be included.

In the event of an inconsistency between a provision of this Deed and a provision deemed to be included pursuant to this clause 20.3, the deemed provision will prevail to the extent of the inconsistency.

## **20.4 Overriding provisions applicable to pensions and annuities**

If a Benefit is payable in the form of a pension or an annuity, the Trustee will pay the pension or annuity on such basis as it considers necessary or desirable to comply with Superannuation Law. The Trustee has the power to adjust the operation of the Deed if the Trustee considers such adjustments to be necessary or desirable having regard to the intention of this clause 20.4 and the advice of the Actuary.

## **20.5 Trustee has power to consent to exercise of discretion**

If the Deed provides for the exercise of a discretion by a person other than the Trustee, and Superannuation Law requires that discretion to be exercised only with the consent of the Trustee:

- (a) that discretion may only be exercised by that person with the consent of the Trustee; and
- (b) the Trustee may give its consent to the exercise of such discretion.

## **20.6 Modifications and exemptions**

- (a) Subject to Superannuation Law, the Trustee may seek modifications of, or exemptions from, the requirements of Superannuation Law.
- (b) If any modification or exemption by the Superannuation Authority applies in respect of the Deed, the Avanteos Superannuation Trust, the Divisions, sub-plans or the Trustee, the Trustee is relieved from compliance with those provisions of the Deed and Superannuation Law expressed in that modification or exemption (subject to any conditions in that modification or exemption).

# **21 MISCELLANEOUS PROVISIONS**

## **21.1 Determination of disputes**

The Trustee may determine any question in relation to the existence, meaning, application or effect of Superannuation Law or any provision of this Deed, including provisions deemed to be included by clause 20. Any such determination will be binding on all interested persons.

## **21.2 Trustee to keep a Register of Members**

- (a) The Trustee must establish and maintain a Register of Members which contains details determined by the Trustee from time to time.
- (b) The Trustee may correct any manifest error in the Register of Members.
- (c) A Member must notify the Trustee of any changes to their name or address. Notification must be in a form acceptable to the Trustee. On receiving proof to its satisfaction of matters notified to it under this clause, the Trustee must alter the Register of Members.
- (d) The Trustee must arrange for the Register of Members to be audited by the Auditor at such times as may be determined by the Trustee or required by Superannuation Law.
- (e) Unless the law provides otherwise, the Trustee must not record any trust (express, implied or constructive) on the Register of Members.

### 21.3 Notices to Members given by the Trustee

Any document, information, form, instrument or other notice whatsoever which is required by this Deed to be given by the Trustee to Members:

- (a) must be in writing;
- (b) must be delivered to the intended recipient by:
  - (i) pre-paid post, airmail or courier to the address appearing in the Register of Members;
  - (ii) by fax to the fax number of the intended recipient previously notified to the Trustee; or
  - (iii) by electronic means (including by email or other electronic messaging system) in a format approved by the Trustee (if any); and
- (c) will be taken to be duly given or made:
  - (i) in the case of delivery by post, three days after the date of posting (and a statement signed by the Trustee as to the date and method of posting is proof of those matters); or
  - (ii) in the case of fax, on receipt by the Trustee of the transmission control report from the despatching machine showing the correct destination fax number but, if sent later than 5.00 pm, it will be taken to be duly given or made on the next day. A statement signed by the Trustee that the notice was sent by fax, and that a transmission report was produced indicating the fax was sent, is proof of those matters;
  - (iii) in the case of delivery by electronic means, upon the generation of a delivery verification notice or log entry or other confirmation that the notice has been delivered or immediately upon sending if no notice of delivery failure is subsequently received by the Trustee; and
  - (iv) if the requirements of this clause 21.3 are satisfied, even if the notice is not actually received by the Member for whatever reason.

### 21.4 Notices to be given to the Trustee

Any direction, consent, nomination, instruction, form or information whatsoever (**Notice**) which is required by this Deed to be given by a person to the Trustee:

- (a) must be in writing;
- (b) must be delivered to the Trustee by:
  - (i) pre-paid post, airmail or courier;
  - (ii) by fax to the fax number of the Trustee; or
  - (iii) by electronic means (including by email or other electronic messaging system) in a format approved by the Trustee (if any); and

- (c) will only be taken to have been given or made if and when the Notice is actually received during business hours by the Trustee.

#### **21.5 Copies of Trust Deed**

A copy of this Deed will be available for inspection by Members at the registered office of the Trustee during usual business hours.

#### **21.6 Australian dollars**

All Benefits are expressed and paid in Australian currency unless expressly otherwise agreed by the Trustee with an Employer or Member.

#### **21.7 Governing law**

This Deed will be governed by and construed in accordance with the laws operating in Victoria and the Trustee and each Member and Participating Employer and any person claiming through any of them submits to the non-exclusive jurisdiction of the Courts there.

#### **21.8 Indemnities**

Each indemnity and right of reimbursement in this Deed is a continuing obligation and will survive the termination of this Deed. It is not necessary for any person entitled to the benefit of an indemnity or right of reimbursement under this Deed to incur expense or make payment before enforcing a right of indemnity or right of reimbursement conferred by this Deed.

# Deed of Amendment

## SCHEDULE 1

### Rules of the Avanteos Superannuation Trust- Division 1

#### 1. APPLICATION OF RULES

- (a) These Rules apply to Members of Division 1 of the Avanteos Superannuation Trust and their respective employer;
- (b) If the Trustee has divided Division 1 into sub-plans or establishes a Sub-plan, then these Rules will apply to each Sub-plan as varied by the Trustee provided that no such variation may adversely alter an existing Member's right or claim to accrued Benefits or the amount of those accrued Benefits, except as permitted by Superannuation Law;
- (c) Where the Trustee has established the Rules which will apply to a Sub-plan by resolution, the Trustee may vary those Rules by resolution provided that the variation does not adversely affect a Member's right or claim to accrued Benefits or the amount of those accrued Benefits, except as permitted by Superannuation Law.

#### 2. APPLYING FOR MEMBERSHIP

##### 2.1 Division 1

Eligibility to apply for membership of Division 1 or a Sub-plan within Division 1 will be determined by the Trustee from time to time.

##### 2.2 Application for Membership

Unless it decides otherwise, the Trustee must not accept and admit a person as a Member unless:

- (a) if the person is making the application personally, the applicant has:
  - (i) completed an application for membership in accordance with clause 11.1;
  - (ii) completed a Benefit Form (unless the applicant is not required to do so);
  - (iii) completed an Investment Choice Form (unless the applicant is not required to do so);
  - (iv) completed an Insured Benefits Form (unless the applicant is not required to do so);
  - (v) agreed in writing to be bound by and comply with the Deed and Rules;
  - (vi) received from the Trustee the information, statements and reports which Superannuation Law requires to be given;
  - (vii) completed a Pension Request Form (if the applicant wishes to receive a Benefit in pension form); and

- (viii) provided the Trustee with any other information, statement or document required by the Trustee (in a form acceptable to the Trustee); or
- (b) if a Division 1 Employer is making the application on behalf of a person who is an existing or prospective employee of the Division 1 Employer, the Division 1 Employer has:
  - (i) completed an application for membership in accordance with clause 11.1;
  - (ii) completed a Benefit Form;
  - (iii) completed an Investment Choice Form (if required);
  - (iv) completed an Insured Benefits Form;
  - (iv) received from the Trustee the information, statements and reports which Superannuation Law require to be given; and
  - (v) provided the Trustee with any other information, statement or documents required by the Trustee (in a form acceptable to the Trustee).

## **2.2A Trustee's discretion to accept or reject application**

The Trustee may accept, reject or not accept any application for membership under this Rule at its discretion and without giving reasons.

## **2.3 Date applicant becomes a Member**

A person will become a Member of Division 1 on the day the Trustee accepts their application for membership or on such other date as may be notified by the Trustee.

## **2.4 Regular pension request**

The Trustee must not approve a Pension Request Form unless it complies with Superannuation Law.

# **3. PARTICIPATING DIVISION 1 EMPLOYERS**

## **3.1 Eligibility for participation as a Division 1 Employer**

Employers of existing or prospective Division 1 Members are eligible to apply to participate as a Division 1 Employer.

## **3.2 Form of application**

The Trustee may specify the form in which an application for participation under this clause must be made.

## **3.3 Trustee's discretion to accept or reject applications**

The Trustee may accept, reject or not accept any application for participation under this Rule at its discretion. The Trustee is not required to give any reasons in connection with the exercise of its discretion under this clause.

### **3.4 Date of acceptance of participation**

An employer will become a Division 1 Employer on the day the Trustee accepts its application or on such other date as may be notified by the Trustee.

### **3.5 Division 1 Employers bound by Deed**

A Division 1 Employer will be deemed to have consented to be bound by the Deed and these Rules.

### **3.6 Obligation to provide information**

A Division 1 Employer must provide the Trustee with any information which the Trustee requests for any purpose connected with Division 1.

### **3.7 Termination of participation**

An employer will cease to be a Division 1 Employer if:

- (a) the Division 1 Employer notifies the Trustee that it will cease contributing to the Division permanently; or
- (b) the Trustee notifies the Division 1 Employer that its participation will cease.

## **4. MEMBER ACCOUNTS**

- (a) The Trustee must establish and maintain a Member Account in respect of each Division 1 Member.
- (b) The following amounts may be credited to a Member's Member Account:
  - (i) any Contributions received by the Trustee in respect of the Member;
  - (ii) any positive earnings in relation to the investments of the Division in respect of the Member as determined from time to time by the Trustee on a basis approved by the Trustee;
  - (iii) any Insured Benefits actually received by the Trustee in respect of the Member from an Insurer;
  - (iv) amounts paid, transferred or distributed under clauses 19.5 or 19.6;
  - (v) such other amounts which the Trustee considers it to be appropriate or equitable to credit to the Member's Member Account.
- (c) The following amounts may be debited to a Member's Member Account:
  - (i) any Benefits paid, distributed or transferred to or in respect of the Member under the Deed;
  - (ii) any negative earnings in relation to the investments of the Division in respect of the Member as determined from time to time on a basis approved by the Trustee;
  - (iii) any premiums referable to an Insurance Policy relating to the Member;

- (iv) any costs, charges, expenses, outgoings and Taxes in respect of the Member, including charges levied pursuant to clause 10;
  - (v) amounts applied by the Trustee pursuant to clause 15;
  - (vi) amounts applied by the Trustee for the purposes of creating reserves or making provisions for Taxes;
  - (vii) such other amounts which the Trustee considers it to be appropriate or equitable to be debited to the Member's Member Account.
- (d) The Trustee may prescribe a minimum account balance which must be maintained by a Member in their Member Account.

## **5. CONTRIBUTIONS**

### **5.1 Contributions by Division 1 Employers**

Each Division 1 Employer must make Contributions at the level and on a basis agreed by the Trustee. With the Trustee's consent, a Division 1 Employer may make additional Contributions to provide additional Benefits for one or more Division 1 Members.

### **5.2 Contributions by Division 1 Members**

Each Division 1 Member must make Contributions in such manner as the Member determines and the Trustee accepts from time to time.

### **5.3 Eligibility to make Contributions**

- (a) It is a condition of acceptance of a Contribution that, at the time of payment:
  - (i) the contributor is eligible to make the Contribution under Superannuation Law; and
  - (ii) by accepting the Contribution, the Division will not be in breach of Superannuation Law.
- (b) If the Trustee is or becomes aware that a Contribution has been made otherwise than in accordance with paragraph (a), the Trustee may:
  - (i) return the Contribution; or
  - (ii) make arrangements with the relevant contributor to ensure compliance with Superannuation Law.

## **6. BENEFITS**

### **6.1 Circumstances in which Benefits payable**

Benefits will be payable in respect of a Member upon:

- (a) their attaining the age at which Superannuation Law permits a Benefit to be paid and:
  - (i) the Member requests the Benefit be paid; and

- (ii) the Trustee consents to the payment of the Benefit;
- (b) their attaining the age (if any) at which Superannuation Law requires a Benefit to be paid (whether by reason of age alone or by reason of a combination of age and other circumstances);
- (c) their death; or
- (d) their Total and Permanent Disablement.

A Member is entitled to receive a Salary Continuance Benefit upon their cessation of gainful employment due to ill health but only if a Salary Continuance Policy is maintained in respect of the Member.

## 6.2 Retirement Benefit

If a Member retires within the meaning of Superannuation Law, the Trustee will pay Benefits to the Member:

- (a) in accordance with the relevant Benefit Form; or
- (b) if necessary to comply with Superannuation Law, equal to the balance of the Member Account of that Member, less any deduction that is entitled to be made under the Deed.

## 6.3 Benefit at prescribed age - continuing employment

If a Member has reached the Prescribed Age, the Member may require the Trustee to pay to the Member all or, with the consent of the Trustee, part of the balance of the Member Account of that Member, less any deduction that is entitled to be made under the Deed.

## 6.4 Benefit at prescribed time - not continuing full-time or part-time employment

If Superannuation Law requires benefits to be paid at a particular time, then the Trustee must pay Benefits to the Member:

- (a) in accordance with the relevant Benefit Form; or
- (b) if necessary to comply with Superannuation Law, equal to the balance of the Member Account of that Member, less any deduction that is entitled to be made under the Deed.

## 6.5 Death Benefits

- (a) If a Member dies then the Trustee will pay a Benefit in respect of the Member equal to the aggregate of:

- (i) the balance of the Member Accounts of that Member; and
- (ii) any Insured Death Benefit of the Member received by the Trustee in respect of that Member,

less any deduction that is entitled to be made under the Deed.

- (b) Any Benefits under paragraph (a) will be paid:
  - (i) in accordance with any relevant Binding Nomination or any relevant Accepted Non-Lapsing Nomination (as applicable);

- (ii) in the absence of a Binding Nomination and an Accepted Non-Lapsing Nomination, at the discretion of the Trustee having regard to any relevant notice under clause 14.5;
- (iii) if the Trustee cannot determine any dependants to whom a Benefit will be paid, the Benefit will be paid to the Division 1 Member's legal personal representative; or
- (iv) if the Trustee has not, after making reasonable inquiries, found any person to whom a Benefit may be paid under Rule 6.5(b)(i), Rule 6.5(b)(ii) or Rule 6.5(b)(iii), the Benefit may be paid to any other person permitted under Superannuation Law.

## **6.6 Total and Permanent Disability Benefit**

If a Member ceases to be in Service by reason of being Totally and Permanently Disabled, the Trustee will pay a Benefit to the Member equal to the aggregate of:

- (a) the balance of the Member Accounts of that Member; and
- (b) any Insured Disability Benefit of the Member received by the Trustee in respect of the Member upon the Member ceasing Service by reason of being Totally and Permanently Disabled,

less any deduction that is entitled to be made under the Deed.

## **6.7 Salary Continuance Benefit**

If a Division 1 Member is entitled to a Salary Continuance Benefit under a Salary Continuance Policy held by the Trustee in respect of the Division 1 Member, the Trustee will pay any amounts actually received from the relevant Insurer to or in respect of the Division 1 Member.

## **6.8 Other conditions of release**

The Trustee may also pay the whole or part of a Benefit in any other circumstance permitted by Superannuation Law, having regard to Preservation Requirements where necessary. The Trustee may impose any reasonable conditions that it thinks appropriate with regard to payments under this Rule 6.8.

# **7. BENEFIT FORMS: LUMP SUM OR PENSION BENEFITS**

## **7.1 Benefit Forms to specify type of Benefit**

Each Benefit Form must indicate whether Benefits are payable by way of lump sum, pension or a combination.

## **7.2 Pensions, annuities and commutation**

- (a) A pension may be paid as a pension from Division 1 or purchased by the Trustee in the form of an annuity in the name of the Trustee or of the relevant Division 1 Member.
- (b) A Division 1 Member receiving or entitled to a pension may, subject to Superannuation Law, commute all or part of the capital value of the pension to a lump sum.

- (c) A Division 1 Member who is entitled to a lump sum Benefit may request that all or part of the lump sum be paid as a pension (but not in relation to Benefits payable on the death of the Division 1 Member). The Trustee and the relevant Division 1 Member must determine:
  - (i) the level, terms and conditions of payment; and
  - (ii) whether the pension will be paid from Division 1 or by way of an annuity purchased by the Trustee.

### 7.3 Payment of pensions

Subject to Rule 7.5, a pension will be payable in accordance with the Benefit Form. Where the Benefit Form is silent in relation to pensions or their manner of payment, the recipient of a pension must give a Pension Request Form to the Trustee.

### 7.4 Variation of Benefit Forms and Pension Request Forms

By notice in writing to the Trustee, a Division 1 Member may vary their Benefit Form or Pension Request Form subject to:

- (a) the Trustee's consent; and
- (b) compliance with Superannuation Law.

### 7.5 Changes in Superannuation Law

If the requirements under Superannuation Law with regard to payment of pensions change, the Trustee may, if Superannuation Law permits, change the terms and conditions on which an existing pension is being paid from the Fund, notwithstanding the terms of any Benefit Form or Pension Request Form.

## 8. FORFEITURE OF BENEFIT

### 8.1 Disentitling event

- (a) Subject to Rule 8.2, the following events constitute **Disentitling Events** for the purposes of this Rule 8:
  - (i) a Division 1 Member assigns, charges or attempts to assign or charge their interest in Division 1;
  - (ii) a Division 1 Member commits an act of bankruptcy, is adjudicated bankrupt, or assigns its estate for the benefit of creditors;
  - (iii) a Division 1 Member is declared an insane or incapable person;
  - (iv) a Division 1 Member does, or attempts to do any act, or an event occurs, where there is a Benefit payable to the Division Member:
    - (A) and the Division 1 Member would be deprived of a right to receive the Benefit; or
    - (B) which would be disposed of or dealt with otherwise than in accordance with the Deed; or

- (v) is suffering from a physical or mental disability which in the opinion of the Trustee, renders them unable to manage their own affairs.
- (b) If a Disentitling Event occurs, the relevant Division 1 Member will cease to be presumptively entitled to receive a payment from Division 1.
- (c) To the extent that forfeiture in accordance with paragraph (b) is void under any bankruptcy related legislation or Superannuation Law, Rule 8.1 is severed from these Rules and has no effect and the relevant Benefit is deemed not to have been forfeited.

## **8.2 Application of forfeited Benefit**

- (a) Subject to paragraph (b), if a Disentitling Event occurs, the Trustee may apply the credit balance of the Division 1 Member's Member Account for:
  - (i) the maintenance or support of the Division 1 Member;
  - (ii) the maintenance or support of one or more of the Division 1 Member's dependants; or
  - (iii) the benefit of the Division 1 Member or their dependants.
- (b) Subject to Superannuation Law, the Trustee may restrict the amount applied pursuant to paragraph (a) to the amount necessary to relieve:
  - (i) genuine financial hardship; or
  - (ii) sickness, accident or other misfortune causing hardship,
 in respect of the recipient.
- (c) Payment or application of money by the Trustee under this Rule will be a complete discharge to the Trustee.

## **9. INSURANCE BENEFITS**

### **9.1 Trustee may take out insurance in respect of Members**

The Trustee may effect or arrange Insurance Policies in respect of the:

- (a) death;
- (b) Total and Permanent Disablement; and
- (c) permanent or temporary cessation of gainful employment due to ill-health, including for the purpose of providing a Salary Continuance Benefit,

of or by a Member.

### **9.2 Cost of insurance to be deducted from Member Accounts**

The cost of any Insurance Policy arranged or effected pursuant to Rule 9.1 may be debited to the Member Accounts of the relevant Member on a basis determined by the Trustee.

### **9.3 Payments pursuant to insurance policies to be credited to Member Accounts or paid to Members**

Any payment received by the Trustee from an Insurer under an Insurance Policy maintained pursuant to Rule 9.1 will, at the discretion of the Trustee, be credited to the relevant Member Account or paid to or at the direction of the relevant Member.