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Sunsuper Pty Ltd

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DuluxGroup (Australia) Pty Ltd

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# Benefit Deed

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Date 26<sup>th</sup> OCTOBER 2018

## Parties

**Sunsuper Pty Ltd** ABN 88 010 720 840 of 30 Little Cribb Street, Milton, Queensland  
(Trustee)

**DuluxGroup (Australia) Pty Ltd** ABN 67 000 049 427 of 1956 Dandenong Rd, Clayton,  
Victoria (Principal Employer)

## Background

- A The Trustee is the trustee of Sunsuper (**Fund**).
- B The Fund is governed by a declaration of trust dated 1 October 1987 as amended (**Trust Deed**).
- C The Principal Employer is the principal employer of the Former Fund.
- D The Principal Employer has made application to become a Participating Employer in the Fund, for the purpose of providing superannuation benefits for its Employees from the Commencement Date.
- E The Trustee and the Principal Employer have agreed that benefits for certain of the Employer's Employees are to be provided on the terms set out in this document from the Commencement Date.
- F This document includes:
  - (a) a Defined Benefit Agreement in respect of Defined Benefits to be provided by the Fund for certain of the Employer's Employees;
  - (b) an agreement by which the Employer agrees to contribute to the Fund an amount specified in this document in respect of those of the Employer's Employees who are to become Defined Benefit Members; and
  - (c) a notification by the Employer to the Trustee that those of the Employer's Employees who are to become Defined Benefit Members are to be obliged to contribute to the Fund on the basis prescribed in this document.



# Agreed terms

## 1 Definitions

### 1.1 Terms defined in this document

In this document these terms have the following meanings:

<b>Accrued Benefit Multiple</b>	As at the date of calculation, the sum of: (a) the Member's Fund Multiple; (b) the Member's Former Fund Multiple; and (c) the Member's Provident Fund Multiple.
<b>Accrued Retirement Benefit</b>	As at the date of calculation, the greater of: (a) the product of the Member's Accrued Benefit Multiple and the Member's Final Average Salary; and (b) the sum of the Member's Minimum Retirement Benefit calculated as at the date of retirement from the employ of the Employer or as at the Member's Normal Retirement Date (if later) and if the Member retires from the employ of the Employer after the Normal Retirement Date: (i) compound interest on the Member's Minimum Retirement Benefit at the Declared Rate; and (ii) any contributions paid by the Member (but not deemed to have been paid by the Member under <b>clause 3.2(e)</b> ) after the Normal Retirement Date accumulated with compound interest at the Declared Rate.
<b>Accrued Withdrawal Benefit</b>	As at the date of calculation, the product of the Member's Accrued Benefit Multiple, the Reduction Factor and the Member's Final Average Salary.
<b>Allowance Adjustment</b>	The amount determined by the Principal Employer to be the allowance adjustment in respect of a TARDB Transition Member and notified to the Trustee.
<b>Additional Voluntary Contribution Account</b>	The account kept for a Member under <b>clause 10</b> .
<b>Combined Membership</b>	As at the date of calculation, the aggregate period of a Member's continuous membership of: (a) the Fund;

	<p>(b) the Former Fund, as notified by the Former Fund Trustee; and</p> <p>(c) any Predecessor Fund, as notified by the Former Fund Trustee.</p>
<b>Combined Membership Start Date</b>	For the purposes of determining the Reduction Factor for a Member, the date the Member's membership of the Former Fund or any Predecessor Fund commenced, as notified by the Former Fund Trustee.
<b>Contribution Rate Options</b>	0%, 1%, 2%, 3%, 4%, 5%, 6% and 7%.
<b>Contribution Review Date</b>	Such date or dates in any year as the Principal Employer, with the consent of the Trustee, may determine for the purposes of this document either generally or in respect of any particular group of Members or any particular Member, being the date or dates as at which a Member's Rate of Contribution may be varied as provided in <b>clause 3.1(c)</b> .
<b>Declared Rate</b>	The rate of interest determined by the Trustee, after consulting the Actuary, in respect of any particular period for the purposes of the whole or a particular provision of this document.
<b>Deferred Pension Member</b>	<p>(a) A Transferred Deferred Pension Member; and</p> <p>(b) a Pre 1 October 1987 FBSF Member who, having left the employer of the Employer, has been retained as a person entitled to a deferred pension under <b>clause 9.2</b>.</p>
<b>FAS/ Final Average Salary</b>	As at the date of calculation, the highest average annual Salary of the Member during any three consecutive years of Combined Membership preceding that date.
<b>Flexible Benefits Fund</b>	The former superannuation fund known as The Flexible Benefits Super Fund (formerly known as the Orica Group Superannuation Fund and before that known as the ICI Australia Limited and Associated Companies Superannuation Fund).
<b>Former Fund</b>	The superannuation fund known as The DuluxGroup Employees Superannuation Fund established by a trust deed and rules dated 23 December 2010 (as amended).
<b>Former Fund Multiple</b>	<p>The multiple which the Former Fund Trustee notifies the Trustee is the multiple applicable to a Member's period of membership of:</p> <p>(a) the Former Fund; and</p> <p>(b) any Predecessor Funds, excluding the Provident</p>

	Fund.
<b>Former Fund Transfer Date</b>	The date of the transfer of the interests of members, and the assets, of the Former Fund to the Fund.
<b>Former Fund Trustee</b>	The trustee of the Former Fund immediately before the Former Fund Transfer Date.
<b>Former Fund Rules</b>	The governing rules of the Former Fund as in force immediately before the Commencement Date.
<b>Fund Membership</b>	<p>The most recent uninterrupted period during which the Member has been a Member in the employ of the Employer and a Member of the Plan plus:</p> <p>(a) any further period deemed to be Fund Membership for the purposes of the whole or any particular provision of this document;</p> <p>(b) any further period which the Principal Employer may declare to be Fund Membership for the purposes of the whole or any particular provision of this document.</p>
<b>Fund Multiple</b>	<p>The multiple determined according to the following formula having regard to the period of Fund Membership completed by the Member at one or more of the Contribution Rate Options:</p> $\frac{1}{100} [ 4.7 \times \text{NFM}_0 + 7.7 \times \text{NFM}_1 + 10.7 \times \text{NFM}_2 + ]$ $[ 13.7 \times \text{NFM}_3 + 16.7 \times \text{NFM}_4 + 19.7 \times \text{NFM}_5 ]$ $[ + 22.7 \times \text{NFM}_6 + 25.7 \times \text{NFM}_7 ]$
<b>Incapacity</b>	A failure of mental or physical health which, in the opinion of the Trustee after consideration of evidence satisfactory to the Trustee, permanently incapacitates a Member from doing ordinary work in the employ of the Employer and which in the opinion of the Trustee is not due to the Member's own fault or misconduct.
<b>Maximum Multiple</b>	As at the date of calculation, the product of $\frac{19.7}{100}$ and the number of years (and any fraction of an incomplete year) of Combined Membership completed by the Member.
<b>Member Accumulation</b>	The notional account established under <b>clause 2.1(a)(iii)</b> .
<b>Minimum Retirement Benefit</b>	Of a Pre 1 July 1992 FBSF Member, is the amount calculated under <b>clause 5.4</b> or <b>clause 5.5</b> , as applicable to the Member.
<b>NFM<sub>0</sub>, NFM<sub>1</sub>, NFM<sub>2</sub>, NFM<sub>3</sub></b>	At the date of calculation, the number of years (and any fraction of an incomplete year) of Fund Membership

<b>NFM<sub>4</sub>, NFM<sub>5</sub>, NFM<sub>6</sub> and NFM<sub>7</sub></b>	completed by the Member during which the Member's Rate of Contribution to the Fund has been respectively 0%, 1%, 2%, 3%, 4%, 5%, 6% or 7%.
<b>Notional Company Accumulation</b>	The notional account established under <b>clause 2.1(a)(ii)</b> .
<b>Normal Death Benefit</b>	Of a Member who dies before age 62, the amount calculated under <b>clause 6.3</b> .
<b>Normal Retirement Date</b>	The Member's 65 <sup>th</sup> birthday, or an earlier date not being earlier than the Member's 62 <sup>nd</sup> birthday: (a) as notified to the Trustee by the Former Fund Trustee in respect of that Member; or (b) as agreed between the Member and the Employer, with the consent of the Principal Employer and the Trustee.
<b>Participation Deed</b>	The document titled 'Participation Deed' entered into between the Trustee and the Principal Employer, and where applicable any Associated Employer.
<b>Predecessor Fund</b>	The Flexible Benefits Fund, the Provident Fund and any other superannuation plan that a Member was a member of before joining the Former Fund, membership of which was relevant to the calculation of benefits in the Former Fund Rules.
<b>Pre 1 April 1985 FBSF Member</b>	A Member that the Former Fund Trustee notifies is classified as a Pre 1 April 1985 FBSF Member.
<b>Pre 1 October 1987 FBSF Member</b>	A Member that the Former Fund Trustee notifies is classified as a Pre 1 October 1987 FBSF Member.
<b>Pre 1 July 1992 FBSF Member</b>	A Member that the Former Fund Trustee notifies is classified as Pre 1 July 1992 FBSF Member.
<b>Pre 25 February 1999 FBSF Member</b>	A Member that the Former Fund Trustee notifies is classified as a Pre 25 February 1999 FBSF Member.
<b>Post 1982 Provident Member</b>	A Member that the Former Fund Trustee notifies is classified as a Post 1982 Provident Member.
<b>Prospective Combined</b>	The period of Combined Membership the Member would have completed as at the Member's 62 <sup>nd</sup> birthday if the Member had remained in the employ of the Employer as a

<b>Membership</b>	Member until the Member attained age 62.
<b>Prospective Final Average Salary</b>	The Final Average Salary which would have applied in respect of the Member as at the Member's 62 <sup>nd</sup> birthday if the Member had continued in the employ of the Employer as a Member until the Member attained age 62 with the same Salary as applied immediately before the date the Member was last at work.
<b>Provident Fund</b>	The former superannuation fund known as ICI Australia Limited and Associated Companies Joint Provident Fund.
<b>Provident Fund Accumulation</b>	The notional account established under <b>clause 2.1(a)(iv)</b> .
<b>Provident Fund Multiple</b>	The multiple which the Former Fund Trustee notifies the Trustee is the multiple applicable to a Member's period of membership of the Provident Fund.
<b>Protected Entitlement</b>	At the material time: (a) in the case of a Beneficiary, the rights and interests of the Beneficiary in relation to benefits determined in accordance with the Rules of the Plan in force as at the material time; and (b) in the case of a Member, the right of the Member to have the benefits prospectively payable to or in respect of the Member in respect of the period up to the material time determined in accordance with the Rules of the Plan in force from time to time before and at the material time.
<b>Rate of Contribution</b>	At any date, the percentage rate determined under <b>clause 3.1</b> then being used to determine the rate of contributions payable to the Fund by the Member.
<b>Reduction Factor</b>	0.700 at the Combined Membership Start Date increasing uniformly to 1.000 at the date the Member attains age 55.
<b>Salary</b>	At any date: (a) for a TARDB Transition Member, the Member's Total Annual Remuneration minus the Member's Allowance Adjustment; (b) for any other Member, the ordinary-time rate of salary or wage being paid to the Member by the Employer, except to the extent determined by the Member's Employer and approved by the Principal Employer shall not include any shift pay, bonus, commission, payment for overtime, allowance (whether in money or money's worth) or



	director's fees, provided that in any particular case Salary for the purpose of the whole or any particular provision of this document shall be such other amount or determined in such other manner as may be determined by the Member's Employer and approved by the Member and the Principal Employer from time to time.
<b>SG Act</b>	The <i>Superannuation Guarantee (Administration) Act 1992</i> .
<b>Shortfall Component</b>	The meaning given in the SG Act.
<b>TARDB Transition Member</b>	A Member that the Former Fund Trustee notifies is classified as a TARDB Transition Member.
<b>Total and Permanent Disablement</b>	(a) Having been absent from the employ of an Employer through injury or illness for six consecutive months or such lesser period as the Trustee considers appropriate; and  (b) in the opinion of the Trustee, after consideration of evidence satisfactory to the Trustee, having become disabled to such an extent as to render the Member unlikely ever to resume work in or attend to any remunerative work for which the Member is or may become reasonably suited by education, training or experience.
<b>Total Annual Remuneration</b>	At any date, the amount determined by the Principal Employer to be the total annual remuneration in respect of the TARDB Transition Member and notified to the Trustee.
<b>Transferred Deferred Pension Member</b>	A person who immediately before the Transfer Date was classified as a Deferred Pension Member in the Former Fund, as notified by the Former Fund Trustee.
<b>Unallocated Account</b>	The Unallocated Account of the Plan under clause 5.9 of the Trust Deed (or the provision in equivalent terms following any amendment of the Trust Deed after the date of this document).

## 1.2 Meaning of Beneficiary and Member

In this document:

**Beneficiary** refers to a Beneficiary of a benefit provided under this document.

**Member** refers to a Defined Benefit Member of the Plan.

### **1.3 Terms defined in Trust Deed and Participation Deed**

Words and phrases defined in the Trust Deed or in the Participation Deed have the same meaning in this document unless this document expressly provides otherwise.

### **1.4 Payment as a death benefit**

In this document a reference to payment of an amount 'as a death benefit' refers to payment to a Member's Dependants or Legal Personal Representative determined under clause 11.8 of the Trust Deed (or the provision in equivalent terms following any amendment of the Trust Deed after the date of this document).

## **2 Transfer**

### **2.1 Allocation to accounts**

The Trustee and the Principal Employer acknowledge that the Trustee is to receive payments from the Former Fund which must be allocated to the Fund in the following manner:

- (a) An amount attributable to:
  - (i) an additional voluntary contribution account in the Former Fund, as notified to the Trustee by the Former Fund Trustee, must be allocated to the Additional Voluntary Contribution Account of the relevant Member;
  - (ii) an employer accumulation and notional employer accumulation in the Former Fund, as notified to the Trustee by the Former Fund Trustee, must be allocated to the Notional Company Accumulation of the relevant Member;
  - (iii) contributions and deemed contributions to the Former Fund made by the Member (but not including voluntary contributions), as notified to the Trustee by the Former Fund Trustee, must be allocated to the Member Accumulation of the relevant Member;
  - (iv) a provident fund accumulation in the Former Fund, as notified to the Trustee by the Former Fund Trustee, must be allocated to the Provident Fund Accumulation of the relevant Member.
- (b) Additional Voluntary Contribution Accounts will be maintained in accordance with **clause 10**.
- (c) The Trustee will allocate compound interest at the Declared Rate to Notional Company Accumulations, Member Accumulations and Provident Fund Accumulations. A rate of interest is a rate of net earnings and may be positive or negative.

## **2.2 Membership eligibility**

- (a) Each Member was a member of the Defined Benefit category of the Former Fund designated as Category A, and membership of the Fund under the terms of this document is available only to those persons.
- (b) A Member will cease to be a person to whom this document applies if the person ceases to be a Defined Benefit Member. The Trustee must then make arrangements with the Member and the Principal Employer for the provision of benefits from the Fund, as a member entitled to accumulation benefits.

## **3 Member contributions**

### **3.1 Member contribution rates**

- (a) Subject to **clause 3.1(d)** and the other provisions of this **clause 3**, a Member shall contribute to the Fund a percentage of their Salary as at the date the contribution is due, the percentage being selected by the Member from the Contribution Rate Options.
- (b) On the Commencement Date, the Member's Contribution Rate Option is the contribution rate that applied in the Former Fund immediately before the Commencement Date, as notified by the Former Fund Trustee.
- (c) A Member may by written notice to the Principal Employer elect to change their Rate of Contribution by nominating, subject to **clause 3.1(d)**, another of the Contribution Rate Options which the Member wishes to apply in respect of the Member from the next subsequent Contribution Review Date.
- (d) A Member's Rate of Contribution shall not exceed 5% during any period when the Accrued Benefit Multiple of the Member is greater than the Member's Maximum Multiple.
- (e) A Member whose Rate of Contribution to the Fund is the highest permitted for the time being pursuant to the other provisions of this **clause 3** may contribute to the Fund (by deduction from Salary or otherwise) additional contributions. Any additional contributions so paid shall be recorded in the Member's Additional Voluntary Contributions Account and applied for the benefit of the Member pursuant to **clause 10** or in such other manner as the Principal Employer and the Trustee may agree with the Member concerned.
- (f) The additional contributions payable by a Member pursuant to **clause 3.1(e)** shall cease immediately if the Member's Rate of Contribution is reduced below the highest permitted pursuant to the other provisions of this **clause 3**, unless the Principal Employer, the Trustee and the Member agree otherwise.

### 3.2 Payment of Member contributions

- (a) Unless this document or the law provide otherwise, a Member's contributions shall be deducted by the Member's Employer from each payment of or on account of Salary. Any amount so deducted by an Employer shall be held upon trust by that Employer for the benefit of the Fund and shall be paid to the Fund in the manner and at the times determined by the Trustee after consulting the Employer. Any amount so paid to the Fund by an Employer in respect of a Member shall operate as a payment to the Fund by the Member on the day when the Salary from which the contribution is deducted became due.
- (b) Any contributions paid by a Member after the earlier of:
  - (i) the date upon which the Member leaves the employ of the Employer; and
  - (ii) the Member's 70th birthday,shall be recorded in the Member's Additional Voluntary Contribution Account and applied for the benefit of the Member pursuant to **clause 10**.
- (c) Subject to such terms and conditions as the Principal Employer thinks fit:
  - (i) the Principal Employer may for such period as the Principal Employer thinks fit reduce, suspend or waive the contributions which would otherwise be payable by a Member pursuant to this document; and
  - (ii) subject to **clause 4**, an Employer may agree with a Member to contribute an amount which, after Tax, is equal to the contributions which would otherwise be payable by the Member pursuant to this document.
- (d) For the purpose of calculating the amount or determining the eligibility for payment of any benefit payable pursuant to this document, where the amount of the benefit or the eligibility for the benefit depends on the amount or rate of the contributions paid by that Member or the period during which the Member has contributed at any particular rate, any contributions which would have been paid by a Member but for **clause 3.2(c)**:
  - (i) in the case of **clause 3.2(c)(i)**, may if the Principal Employer so determines be deemed to have been paid by that Member; and
  - (ii) in the case of **clause 3.2(c)(ii)**, shall be deemed to have been paid by that Member.
- (e) Without limiting **clause 3.2(c)**, for the purpose of calculating any benefit or other amount under this document, the calculation of which depends on the amount of the contributions paid by the Member (but not the period during which contributions were paid by the Member or the Member's Rate of Contribution at any time), in addition to any



contributions paid or otherwise deemed to have been paid by a Member, the Member shall be deemed to have contributed a further amount equal to 1% of Salary throughout such period.

- (f) If the contributions payable by a Member are not paid to the Fund as and when required, the Trustee after consulting the Actuary may impose such special terms conditions and restrictions in respect of membership of the Fund as the Trustee thinks fit, including reducing or otherwise adjusting all or any of the benefits to be provided for or in respect of the Member or refusing to accept further contributions by and in respect of the Member.

### **3.3 Allocation to Member Accumulation**

The Trustee must allocate to a Member's Member Accumulation the Member's contributions to the Fund including contributions deemed to have been paid by the Member pursuant to **clause 3.2(c), (d) or (e)** (but not including contributions allocated to the Additional Voluntary Contributions Account).

## **4 Employer contributions**

### **4.1 Employer contribution obligations**

- (a) The Principal Employer guarantees the solvency of the Unallocated Account.
- (b) Each Employer must contribute at the rate prescribed by the Trustee from time to time on the advice of the Actuary.
- (c) Subject to Superannuation Law, an Employer may contribute any additional amounts in respect of individual Members or Members generally.
- (d) The Trustee may accept a Shortfall Component and any other amount permitted under Superannuation Law as a contribution in respect of a Member.

### **4.2 Notice to terminate, reduce or suspend Employer contributions**

- (a) Notwithstanding anything expressed or implied to the contrary in **clause 4.1(b)** and subject to Superannuation Law, the Principal Employer may, or an Associated Employer with the consent of the Principal Employer may, by written notice (**Contribution Change Notice**) given to the Trustee reduce that Employer's contributions to the extent and either indefinitely or for the period specified in the Contribution Change Notice and either generally or in respect of any persons or class of persons named or described in the Contribution Change Notice.
- (b) The Contribution Change Notice shall take effect on the date (**Notice Date**) which is the later of the date the Contribution Change Notice is received by the Trustee and the date specified in the Contribution Change Notice for such purpose.



- (c) An Employer's contributions may not be reduced below the amount or rate of contributions which the Actuary (whose decision shall be final) certifies must be paid by that Employer from time to time in order to secure the Protected Entitlement as at the Notice Date in respect of each Beneficiary formerly employed by that Employer and each Member then or afterwards employed by that Employer.
- (d) A Contribution Change Notice shall not affect the Employer's liability in respect of contributions due from that Employer before the Notice Date.
- (e) On and after the Notice Date:
  - (i) the Trustee, having regard to the advice of the Actuary, may by resolution reduce any benefit which is or becomes or may become payable to or in respect of any person named or described in the Contribution Change Notice and any other person whom the Trustee considers is affected by the Contribution Change Notice to such extent and in such manner as the Trustee considers to be appropriate and equitable and the reduced benefits shall be substituted for the benefits otherwise payable or to be provided under this document; and
  - (ii) the Trustee may withhold payment of all or part of a benefit until the Trustee has determined whether any reduction is required and, if so, has effected the reduction to the Trustee's satisfaction, provided that the Trustee may not reduce the Protected Entitlement of any Beneficiary or Member as at the Notice Date.
- (f) As soon as reasonably practicable after receiving a Contribution Change Notice, the Trustee shall notify each affected Member of the effect of the Contribution Change Notice. However such notice is not a precondition of any benefit reduction as a result of the Contribution Change Notice and failure to so notify any Member or any omission from or error in any such notice shall not render the Contribution Change Notice or any benefit reduction made as a result of the Contribution Change Notice void, voidable or unenforceable.

#### **4.3 No repayment to Employer**

Except as expressly provided for in the Rules of the Plan and subject to Superannuation Law, a contribution or payment properly made to the Fund by an Employer shall not under any circumstances revert to that Employer.

## **5 Retirement benefit**

### **5.1 Entitlement to retirement benefit**

If a Member retires from the employ of the Employer (other than in circumstances provided for in **clause 7**) on or after the Normal Retirement Date or:

- (a) on or after attaining age 55; or

- (b) in the case of a Pre 1 October 1987 FBSF Member, at the request of or with the approval of the Employer (other than in the circumstances provided for in **clause 5.1(a)**) on or after attaining age 45 and after completion of the number of years of Combined Membership related to the Member's age at actual retirement as shown in the following table:

Age at Retirement	Years of Combined Membership
45	20
46	18
47	16
48	14
49	12
50 or more	10,

there shall be payable to the Member from the Plan either:

- (c) a lump sum benefit as provided for in **clause 5.2**; or  
 (d) a pension benefit as provided for in **clause 5.3**,

whichever is selected by the Member by notice given to the Trustee in a form acceptable to the Trustee not later than 90 days after the date the Member leaves the employ of the Employer or by such later date, if any, as the Trustee may allow in special circumstances. If the Member does not select one of such benefits within the period or any extended period, the Member shall be deemed to have selected whichever of such benefits is selected by the Trustee. Any such selection by the Trustee in respect of a Member shall be as effective as if made by the Member personally.

## 5.2 Amount of lump sum retirement benefit

- (a) The lump sum payable to a Defined Benefit Member who selects or is deemed to have selected a lump sum benefit shall be:
- if the Member retires on or before the Member's 70th birthday, an amount equal to the Member's Accrued Retirement Benefit as at the date the Member retired from the employ of the Employer; or
  - if the Member retires after the Member's 70th birthday, an amount equal to the Member's Accrued Retirement Benefit calculated as at the Member's 70th birthday (assuming the Member had retired on that date) together with compound interest on that amount at the Declared Rate for the period of Fund Membership after the Member's 70th birthday.
- (b) A Pre 25 February 1999 FBSF Member who attains the Normal Retirement Date is only entitled to the benefit under **clause 5.2(a)** by making an election in writing (in such form and within such timeframe as the Trustee and the Principal Employer determine), and if the Member does not make such an election, the benefit payable under **clause 5.2(a)**

shall be an amount equal to the Member's Accrued Retirement Benefit calculated as at the Normal Retirement Date (assuming the Member had retired on that date) together with compound interest on that amount at the Declared Rate for the period of Fund Membership after the Normal Retirement Date.

### **5.3 Amount of pension retirement benefit**

- (a) The annual amount of the pension payable to a Member who selects or is deemed to have selected a pension benefit shall be:
  - (i) if the Member retires on or before the Member's 70th birthday, an amount equal to one-tenth of the Member's Accrued Retirement Benefit as at the date the Member retired from the employ of the Employer; or
  - (ii) if the Member retires after the Member's 70th birthday, an amount equal to one-tenth of the sum of:
    - (A) the Member's Accrued Retirement Benefit calculated as at the Member's 70th birthday, assuming the Member had retired on that date; and
    - (B) compound interest on the amount in **clause 5.3(a)(ii)(A)** at the Declared Rate for the period of Fund Membership after the Member's 70th birthday, subject to a minimum average rate of interest over that period of 7.5% per annum,and such pension shall be payable for the Member's lifetime.
- (b) **Schedule 1** applies in respect of a Member who selects or is deemed to have selected such a pension and also in respect of the Dependents of that Member.

### **5.4 Minimum Retirement Benefit – Pre 1 July 1992 Members**

The Minimum Retirement Benefit of a Pre 1 July 1992 FBSF Member, other than Post-1982 Provident Member, is an amount equal to the benefit calculated under **clause 9**.

### **5.5 Minimum Retirement Benefit – Post 1982 Provident Members**

The Minimum Retirement Benefit of a Post 1982 Provident Member is the sum of:

- (a) the greater of:
  - (i) the product of the Member's Accrued Benefit Multiple excluding the Provident Fund Multiple, and the Member's Final Average Salary;
  - (ii) the sum of the Member's Member Accumulation and Notional Company Accumulation; and
- (b) the greater of:
  - (i) the product of the Member's Provident Fund Multiple and the Member's Final Average Salary; and

- (ii) the Member's Provident Fund Accumulation.

## **5.6 Accumulation benefit**

- (a) A Member who continues in employment:
  - (i) after the Normal Retirement Date, for a Pre 25 February 1999 FBSF Member who has not made an election in writing under **clause 5.2(b)**; or
  - (ii) after age 70, for any other Member,may at any time elect that their benefit is determined as an accumulation benefit.
- (b) Where a Member makes an election under **clause 5.6(a)**, the Trustee will allocate their benefit to a Retirement Credit as at the date of the election (or such other date as the Trustee determines).

## **6 Death benefit**

### **6.1 Death before Normal Retirement Date**

If a Member dies while in the employ of the Employer before attaining age 62, there shall be payable from the Plan as a death benefit a lump sum equal to the Member's Normal Death Benefit.

### **6.2 Death on or after Normal Retirement Date**

If a Member dies while in the employ of the Employer on or after attaining age 62, there shall be payable from the Plan a lump sum equal to the lump sum which would have been payable under **clause 5** if the Member had become entitled to receive a retirement benefit on the date of death and had elected to receive a lump sum retirement benefit.

### **6.3 Normal Death Benefit**

The Normal Death Benefit of a Member is a lump sum equal to the greater of:

- (a) an amount calculated as at the date of death in accordance with the following formula, subject to a maximum of 7 times PFAS:

$$\text{PFAS} \times \left[ \text{ABM} + \left( \frac{19.7}{100} \times \text{FS62} \right) \right]$$

Where:

**PFAS** means the Member's Prospective Final Average Salary;

**ABM** means the Member's Accrued Benefit Multiple at the date of death;

**FS62** means the number of years (and any fraction of an incomplete year) between the date of death and the date on which the Member would have attained age 62; and

- (b) the Member's Minimum Retirement Benefit as at the date of death; and



- (c) an amount calculated as at the date of death in accordance with the following formula, subject to a maximum of 7 times PFAS:

the Member's Minimum Retirement Benefit as at the date of death +  
$$\text{PFAS} \times \left( \frac{19.7}{100} \times \text{FS62} \right)$$

Where:

**PFAS** means the Member's Prospective Final Average Salary;

**FS62** means the number of years (and any fraction of an incomplete year) between the date of death and the date on which the Member would have attained age 62.

#### **6.4 Minimum Death Benefit – Pre 1 April 1985 Members**

The amount of the death benefit of a Pre 1 April 1985 FBSF Member shall not be less than 5 times the Member's annual rate of Salary at the date of death.

#### **6.5 Minimum Death Benefit – Post 1982 Provident Members**

The amount of the death benefit for a Post-1982 Provident Member whose Normal Retirement Date is the Member's 65th birthday, shall not be less than an amount calculated as at the date of death in accordance with the following formula, subject to a maximum of 5 times AS:

$$\text{AS} \times [\text{ABM} + (12\frac{1}{2} / 100 \times \text{FS65})]$$

Where -

**AS** means the Member's annual rate of Salary as at the date of death;

**ABM** means the Member's Accrued Benefit Multiple at the date of death;

**FS65** means the number of complete years between the birthday of the Member immediately preceding the date of death (or, if the Member dies on a birthday, that day) and the date on which the Member would have attained age 65.

## **7 Total and Permanent Disablement benefit**

### **7.1 TPD before Normal Retirement Date**

If a Member leaves the employ of the Employer before the Normal Retirement Date as a result of Total and Permanent Disablement, there shall be payable to the Member from the Plan either:

- (a) a lump sum benefit as provided for in **clause 7.2**; or
- (b) a pension benefit as provided for in **clause 7.3**,

whichever is selected by the Member by notice given to the Trustee in a form acceptable to them not later than 90 days after the date the Member ceases employment or by such later date, if any, as the Trustee may allow in special circumstances. If the Member does not select one of such benefits within the



period or any extended period, the Member shall be deemed to have selected whichever of such benefits is selected by the Trustee. Any such selection by the Trustee in respect of a Member shall be as effective as if made by the Member personally.

## **7.2 Lump sum TPD benefit**

- (a) Subject to **clause 7.2(b)**, the lump sum payable to a Member who selects or is deemed to have selected a lump sum benefit shall be:
  - (i) if the Member ceased employment before attaining age 62, an amount equal to the Member's Normal Death Benefit calculated as if the Member had died on the date the Member left the employ of the Employer; or
  - (ii) if the Member ceased employment on or after attaining age 62, an amount equal to the lump sum which would have been payable under **clause 5** if the Member had become entitled to receive a retirement benefit on the date the Member left the employ of the Employer and had selected a lump sum retirement benefit.
- (b) The Trustee may pay a portion of such a lump sum benefit (not exceeding 75% of that benefit) in the form of a pension or by instalments of such amount and on such terms and conditions as the Trustee determines after consulting the Actuary, but:
  - (i) if, in the opinion of the Trustee after consideration of evidence satisfactory to the Trustee, the Member recovers sufficiently before the Normal Retirement Date to be able to earn an income, the Trustee may vary, suspend or cease that pension or those instalments or otherwise deal with the matter as the Trustee thinks the circumstances justify; or
  - (ii) if the Member attains the Normal Retirement Date or dies before that date, the pension or instalments then payable shall cease and the then present value (as determined by the Actuary) of the pension or instalments remaining unpaid shall be payable as a lump sum either to the Member or, if the Member has died, as a death benefit.

## **7.3 Pension TPD benefit**

- (a) Subject to **clause 7.3(b)**, the annual amount of the pension payable to a Member who selects or is deemed to have selected a pension benefit shall be equal to one-tenth of the lump sum determined in respect of the Member in accordance with **clause 7.2**, and such pension shall be payable for the Member's lifetime.
- (b) If, in the opinion of the Trustee after consideration of evidence satisfactory to the Trustee, a Member who retired before the Normal Retirement Date as a result of Total and Permanent Disablement and selected or is deemed to have selected such a pension recovers sufficiently before the Normal Retirement Date to be able to earn an

income, the Trustee may vary, suspend or cease such pension or otherwise deal with the matter as the Trustee thinks the circumstances justify.

- (c) **Schedule 1** applies in respect of a Member who selects or is deemed to have selected such a pension and also in respect of the Dependents of that Member.

#### **7.4 Minimum TPD benefit – Post-1982 Provident Member**

The amount of the benefit payable under **clause 7.2** for a Post-1982 Provident Member whose Normal Retirement Date is the Member's 65th birthday, shall not be less than the amount calculated under **clause 6.5** as if the Member had died on the date the Member left the employ of the Employer.

## **8 Incapacity benefit**

### **8.1 Incapacity before age 55**

If a Member leaves the employ of the Employer before the Normal Retirement Date as a result of Incapacity, there shall be payable to the Member from the Fund either:

- (a) a lump sum benefit as provided for in **clause 8.2**; or
- (b) a pension benefit as provided for in **clause 8.3**,

whichever is selected by the Member by notice given to the Trustee in a form acceptable to the Trustee not later than 90 days after the date the Member leaves the employ of the Employer or by such later date, if any, as the Trustee may allow in special circumstances. If the Member does not select one of such benefits within the period or any extended period, the Member shall be deemed to have selected whichever of such benefits is selected by the Trustee. Any such selection by the Trustee in respect of a Member shall be as effective as if made by the Member personally.

### **8.2 Lump sum Incapacity benefit**

- (a) Subject to **clause 8.2(a)(ii)**, the lump sum payable to a Member who selects or is deemed to have selected a lump sum benefit shall be:
  - (i) if the Member ceased employment before attaining age 62, an amount equal to the Member's Normal Death Benefit calculated as if the Member had died on the date the Member left the employ of the Employer but with the formula including only 20% of FS62; or
  - (ii) if the Member ceased employment on or after attaining age 62, an amount equal to the lump sum which would have been payable under **clause 5** if the Member had become entitled to receive a retirement benefit on the date the Member left the employ of the Employer and had selected a lump sum retirement benefit.
- (b) The Trustee may pay a portion of such a lump sum benefit (not exceeding 75% thereof) in the form of a pension or by instalments of



such amount and on such terms and conditions as the Trustee determines after consulting the Actuary, but:

- (i) if, in the opinion of the Trustee after consideration of evidence satisfactory to the Trustee, the Member recovers sufficiently before the Normal Retirement Date to be able to earn an income, the Trustee may vary, suspend or cease that pension or those instalments or otherwise deal with the matter as the Trustee thinks the circumstances justify; or
- (ii) if the Member attains the Normal Retirement Date or dies before the date, the pension or instalments then payable shall cease and the then present value (as determined by the Actuary) of the pension or instalments remaining unpaid shall be payable forthwith as a lump sum either to the Member or, if the Member has died, as a death benefit.

### **8.3 Pension Incapacity benefit**

- (a) Subject to **clause 8.3(b)**, the annual amount of the pension payable to a Member who selects or is deemed to have selected a pension benefit shall be equal to one-tenth of the lump sum determined in respect of the Member in accordance with **clause 8.2(a)**, and such pension shall be payable for the Member's lifetime.
- (b) If, in the opinion of the Trustee after consideration of evidence satisfactory to the Trustee, a Member who retired before the Normal Retirement Date as a result of Incapacity and selected or is deemed to have selected such a pension recovers sufficiently before the Normal Retirement Date to be able to earn an income, the Trustee may vary, suspend or cease such pension or otherwise deal with the matter as the Trustee thinks the circumstances justify.

### **8.4 Minimum Incapacity benefit – Post-1982 Provident Member**

The amount of the benefit payable under **clause 8.2** for a Post-1982 Provident Member whose Normal Retirement Date is the Member's 65th birthday, shall not be less than the amount calculated under **clause 6.5** as if the Member had died on the date the Member left the employ of the Employer.

## **9 Termination of employment for other reasons**

### **9.1 Withdrawal benefit**

If a Member leaves the employ of the Employer in circumstances where no benefit is payable to or in respect of the Member under any other clause, there shall be payable to the Member from the Plan a lump sum benefit calculated as at the date of cessation of employment equal to:

- (a) for a Pre 1 July 1992 FBSF Member, the greater of the Member's Accrued Withdrawal Benefit and the sum of:
  - (i) the Member's Member Accumulation;

- (ii) the Member's Provident Fund Accumulation; and
- (iii) the Member's Notional Company Accumulation; and
- (b) for any other Member, the Member's Accrued Withdrawal Benefit.

## **9.2 Pre 1 October 1987 FBSF Members – deferred pensions**

- (a) For a Pre 1 October 1987 FBSF Member who ceased to be in the employ of the Employer before the Normal Retirement Date other than by reason of Total and Permanent Disablement or Incapacity, the Trustee if so requested by the Member shall retain the Member as a Deferred Pension Member and **schedule 2** shall apply in respect of the Member and the Member's Dependants. Such a request shall not be effective unless received by the Trustee within 30 days (or such longer period as the Trustee may determine or allow either generally or in any particular case) after the Member ceases to be in the employ of the Employer.
- (b) A pension benefit becomes payable to a Deferred Pension Member, on the later of:
  - (i) the date elected by the Member, where the Member has met a condition of release under Superannuation Law;
  - (ii) the date the Member attains age 65.

## **10 Additional Voluntary Contribution Accounts**

### **10.1 Voluntary contributions and transfers**

- (a) Additional voluntary contributions may be made by or in respect of any Member.
- (b) The Trustee must record in each Additional Voluntary Contribution Account:
  - (i) any additional contributions paid to the Fund by or in respect of the Member (where applicable, net of any Tax which has been allowed for pursuant to **clause 3.2(c)(ii)**);
  - (ii) amounts transferred in respect of the Member from any other funds and arrangements which the Trustee decides to credit to the Account;
  - (iii) any other amounts agreed between the Trustee and the Employer; and
  - (iv) any other amount which the Trustee decides to credit or debit to the Account.



- (c) An Additional Voluntary Contribution Account comprises the Member's Retirement Credit and amounts are allocated to the Account accordingly.<sup>1</sup>

## **10.2 Additional benefit**

- (a) If a Member leaves the employ of the Employer in any circumstances, there shall be payable to or in respect of the Member (in addition to any benefit otherwise payable) a lump sum benefit equal to the balance of the Additional Voluntary Contribution Account.
- (b) If a Member dies, any Additional Voluntary Contribution Account Balance shall be paid as a death benefit.

## **11 Pension in lieu of lump sum**

### **11.1 Lump sum benefit may be paid as pension**

Without prejudice to **clause 5** or **clause 7**, on the application of a Member and with the approval of the Principal Employer, the Trustee may permit the Member to receive in lieu of all or part of any lump sum benefit which otherwise is or becomes payable in respect of the Member a pension benefit payable on such terms and conditions as are approved by the Trustee after consulting the Actuary. The amount of any such pension benefit shall be as determined by the Trustee after consulting the Actuary.

### **11.2 Death of Member receiving pension**

Any benefit which is due and payable pursuant to **clause 11.1** after the death of a Member shall be payable by the Trustee as a death benefit unless the terms and conditions on which that benefit was granted provide otherwise.

## **12 General Benefit provisions**

### **12.1 Prohibited contributions**

The Trustee:

- (a) may refuse to accept any contributions to the Plan without giving any reason for that refusal; and
- (b) must refuse to accept any contribution to the Plan if acceptance would contravene Superannuation Law.

### **12.2 Early release of Defined Benefit**

- (a) Subject to **clause 12.2(b)**, where a Superannuation Regulator approves or Superannuation Law permits the early release of a benefit in respect of a Member and no other benefit is then payable under this document, the Trustee may pay to the Member an amount not exceeding the amount approved for release by the Superannuation Regulator or

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<sup>1</sup> Trust Deed clause 5.6 applies in respect of allocations to a Member's Retirement Credit. Investment choice is also available (Trust Deed clause 8.4).



permitted under Superannuation Law (subject to the Member satisfying any requirements of Superannuation Law). The Trustee shall (with the advice of an Actuary) adjust the Member's benefits in the Fund accordingly and the payment shall be a full discharge of the Trustee's liability in respect of that part of the Member's benefit paid.

- (b) No benefit is payable on the grounds of a Member's Severe Financial Hardship.

### **12.3 Portability of Defined Benefits**

- (a) The Trustee with the approval of the Principal Employer may make or carry into effect an arrangement whereby:
  - (i) an agreed sum or agreed assets shall be accepted into the Fund in respect of a person representing all or part of the value of that person's interest or former interest in another fund or benefit arrangement in addition to unallocated amounts which are not attributable to any person's interest in the Fund; and
  - (ii) that person shall become a Member, Retirement Pensioner or Beneficiary (if not already one) and shall have such rights to benefits and such obligations (whether additional to or in lieu of the rights and obligations provided for under this document) as the Trustee determines with the approval of the Principal Employer after consulting the Actuary.
- (b) Subject to such conditions as the Principal Employer may impose, if a Member is or becomes a participant in another fund or benefit arrangement, the Trustee, with the approval of the Principal Employer and the Member, may pay or transfer to or towards that other fund or benefit arrangement such amount as may be agreed between the Trustee and the Principal Employer but not exceeding the amount calculated by the Actuary (whose decision shall be final) to represent the value of the Member's interest in the Fund.
- (c) If the Member requests, the Trustee may transfer all or a portion of a Member's Additional Voluntary Contributions Account to another Superannuation Entity so long as the transfer is consistent with Superannuation Law.
- (d) The Trustee may effect a payment or transfer under this **clause 12.3** by way of payment of money or transfer of assets. The receipt of the trustees of, or of any other person responsible for, another fund or benefit arrangement (including, in the case of an annuity effected in respect of a Member or Beneficiary, the body providing that annuity) shall be a sufficient discharge to the Trustee and neither the Trustee nor any Employer shall be in any way responsible for the application or disposal by such other trustees or responsible person of money or assets so transferred. Except where the Trustee and the Principal Employer expressly agree otherwise, upon the completion of such a payment or transfer in respect of a Member or Beneficiary all of the rights

and interests of that Member or Beneficiary under this document (and all of the rights and interests of any person otherwise entitled to claim under or in respect of the Member or Beneficiary or on the occurrence of anything affecting the Member or Beneficiary) shall be entirely extinguished.

- (e) Notwithstanding anything expressed or implied to the contrary this document:
  - (i) no payment or transfer shall be made or accepted under this **clause 12.3** if in the opinion of the Trustee to do so would not be in compliance with Superannuation Law; and
  - (ii) without limiting **clause 12.3(e)(i)**, in relation to any payment or transfer which is made or received under this **clause 12.3** the Trustee shall impose such conditions as the Trustee considers are necessary in order to comply with Superannuation Law (which conditions shall be binding on all interested persons) and the Trustee may impose such other conditions as the Trustee considers appropriate.

#### **12.4 Minimum Requisite Benefit**

The aggregate benefit payable in accordance with this document in respect of a Member who dies or leaves the employ of the Employer in any circumstances and for any reason shall not be less than the minimum requisite benefit:

- (a) specified in any current benefit certificate issued by the Actuary in accordance with the SG Act; and
- (b) required by Superannuation Law to be vested in the Member as a consequence of the Member's participation in the Fund.

#### **12.5 General conditions for payment of Defined Benefits**

- (a) The Trustee, after consulting the Actuary and with the consent of the Beneficiary and with the consent of the Principal Employer where the alteration imposes or is likely to impose additional costs on the Principal Employer or an Employer, may alter as the Trustee sees fit the amount, form or terms and conditions of payment of a benefit payable from the Plan to enable a Beneficiary to obtain or improve an entitlement or expected entitlement under a statutory scheme for the provision of pensions, retiring allowances or like benefits.
- (b) Unless this document or the terms and conditions upon which that benefit was granted provide otherwise, the amount of any benefit payable to a Beneficiary which remains unpaid as at the date of death of the Beneficiary shall be paid as a death benefit.
- (c) Subject to Superannuation Law, the Trustee may, at the request of a Member entitled to a benefit, pay all or any part of that benefit by transferring assets of equivalent value to the Member or the Member's nominee. The Trustee may impose such terms and conditions as the



Trustee determines to be appropriate on any such transfer (including a requirement for the Member to obtain appropriate independent financial advice prior to the transfer being implemented if the Trustee thinks fit). The receipt of such assets by the Member or any person to whom the Trustee is requested to make payment on behalf of the Member shall be a full and sufficient discharge to the Trustee, and the Trustee shall not be in any way responsible for the application or disposal by the Member or such other person of the assets so transferred. Upon completion of the transfer in respect of a Member, all of the rights and interests of that Member under the Rules of the Plan (and all of the rights and interests of any person otherwise entitled to claim under or in respect of the Member or on the occurrence of anything affecting the Member) in relation to that part of the benefit represented by the transferred assets shall be entirely extinguished.

## **12.6 Acquisition of annuity**

- (a) Subject to **clause 12.6(d)**, the Trustee may, with the written consent or at the written request of the Principal Employer, effect a payment or transfer of assets for the purposes of acquiring an annuity from a third party provider in respect of a Member or Beneficiary.
- (b) A payment of or transfer of assets in accordance with **clause 12.6(a)** shall be a sufficient discharge to the Trustee and neither the Trustee nor any Employer shall be in any way responsible for the application or disposal by the third party provider of such annuity of money or assets so transferred.
- (c) Except where the Trustee and the Principal Employer agree otherwise, upon the completion of such a payment or transfer of assets in respect of a Member or Beneficiary all of the rights and interests of that Member or Beneficiary under the Rules of the Plan (and all of the rights and interests of any person otherwise entitled to claim under or in respect of the Member or Beneficiary or on the occurrence of anything affecting the Member or Beneficiary) shall be entirely extinguished.
- (d) The Trustee will only pay or transfer of assets pursuant to this **clause 12.6**:
  - (i) having regard to the interests of each relevant Member or Beneficiary; and
  - (ii) in compliance with Superannuation Law.

## **13 Benefit offsets**

### **13.1 Information required by Trustee**

- (a) Each Member shall provide such information and evidence (whether of age or otherwise howsoever), do such acts, sign such documents, undergo such tests, and generally satisfy such requirements as and when the Trustee may consider necessary or desirable.

- (b) If:
  - (i) a Member fails to comply with **clause 13.1(a)** or to satisfy any test or requirement laid down under **clause 13.1(a)** to the satisfaction of the Trustee; or
  - (ii) any statement made or information or evidence provided by or in respect of a Member is found to contain any mis-statement, error, mistake, inaccuracy or suppression,

the Trustee, after consulting the Actuary, may impose such special terms and conditions in respect of membership of and benefits under the Plan as they consider appropriate.

### **13.2 Reduction for Tax assessments**

Without limiting the amounts that may be deducted from a Member's benefits under the Trust Deed by way of Tax payable in respect of a benefit, the amount of any benefit payable in respect of a Member will be reduced by the amount of any surcharge account maintained by the Trustee to account for surcharge assessments received in respect of the Member.

### **13.3 Family Law offsets**

- (a) Despite any other provision in the Trust Deed, this document or the terms of any agreement in relation to a Member's benefits, where the Trustee:
  - (i) creates a new interest for the Spouse or former Spouse of a Member to give effect to a Payment Split; or
  - (ii) transfers or rolls over the entitlement of the Spouse or former Spouse of a Member under a Payment Split;

the Trustee must reduce the amount of the Member's benefit by an amount determined by the Trustee to account for the interest or entitlement of the Member's Spouse or former Spouse.

- (b) In this **clause 13.3**:

**Family Law Act** means the *Family Law Act 1975* (C'wlth).

**Payment Split** has the meaning has the meaning given by the Family Law Act.

## **14 Amendment**

### **14.1 Amendment by Trustee and Principal Employer**

- (a) This document may only be varied or replaced by a document executed by the Trustee and the Principal Employer.
- (b) This document is intended to set out the benefits of Members on the Commencement Date.



- (c) Without limiting **clause 14.1(a)**, if any provision of this document, including an omission, would have the effect that any Member's benefits are not set out as intended, the Trustee may with the agreement of the Principal Employer make such changes to this document or take such other action as is necessary to correct the Member's benefits effective as at the Commencement Date.

## **14.2 Restrictions on amendment**

An amendment of the Rules of the Plan must not substantially prejudice the Protected Entitlement of any Member or Beneficiary except with the consent of the Member or Beneficiary concerned.

# **15 General**

## **15.1 Governing law**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## **15.2 Relationship of parties**

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

## **15.3 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## **15.4 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## **15.5 Rights cumulative**

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

## **15.6 Consents**

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.



## **15.7 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

## **15.8 Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Brisbane;
  - (vii) '\$' or 'dollars' is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) this document includes all schedules and annexures to it; and
  - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;

- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

## **15.9 Headings**

Headings do not affect the interpretation of this document.

## **15.10 Deed**

This document is a deed. Factors which might suggest otherwise are to be disregarded.

# Schedule 1

## Defined Pension Benefits

### 1 Definitions in **schedule 1**

In this **schedule 1**, these terms have the following meanings:

<b>Eligible Child</b>	<p>(a) A Child of a deceased Retirement Pensioner who is under the age of 18 years; and</p> <p>(b) a Child of a deceased Retirement Pensioner who has attained the age of 18 years but is under the age of 25 years and who in the discretion of the Trustee is deemed to be a student.</p>
<b>Eligible Dependant</b>	The surviving Spouse and any Eligible Child of a deceased Retirement Pensioner.
<b>Retirement Pensioner</b>	A Member who is presently entitled to receive a Retirement Pension from the Plan.
<b>Retirement Pension</b>	<p>A pension payable from the Plan:</p> <p>(a) at the Commencement Date, designated as a Retirement Pension by the Former Fund Trustee;</p> <p>(b) pursuant to <b>clause 5.1(d)</b> or <b>clause 7.1(b)</b> (but not <b>clause 7.2(b)</b> or <b>clause 11</b>).</p>
<b>Transferred Retirement Pensioner</b>	A Retirement Pensioner who immediately before the Commencement Date was receiving a pension from the Former Fund, designated as a Retirement Pension by the Former Fund Trustee.
<b>Transferred Spouse Pensioner</b>	A person who immediately before the Commencement Date was receiving a pension from the Former Fund, and became entitled to the pension as the Spouse of a member of the Former Fund on that member's death.

### 2 Transferred pensions

Each Transferred Retirement Pensioner and Transferred Spouse Pensioner is entitled to receive, from the Commencement Date, a pension of an annual amount notified by the Former Fund Trustee.

### 3 Benefits on death of Retirement Pensioner

#### 3.1 Amount of pension

- (a) If a Retirement Pensioner dies and is survived by an Eligible Dependant or Eligible Dependents, an annual pension shall be payable to that Eligible Dependant or those Eligible Dependents, subject to the succeeding provisions of this **paragraph 3**.
- (b) The total annual pension payable pursuant to this **paragraph 3** shall be a percentage of the annual Retirement Pension payable to the Retirement Pensioner as at the date of death, such percentage being determined from the following table depending upon the number and type of Eligible Dependents living from time to time after the death of the Retirement Pensioner:

Eligible Dependents	Percentage
Surviving Spouse only	60%
Surviving Spouse & 1 Eligible Child	70%
Surviving Spouse & 2 Eligible Children	80%
Surviving Spouse & 3 Eligible Children	90%
Surviving Spouse & 4 or more Children	100%
1 Eligible Child	50%
2 Eligible Children	70%
3 Eligible Children	80%
4 Eligible Children	90%
5 or more Eligible Children	100%

- (c) The maximum pension (if any) payable to the surviving Spouse at any time shall be 60% of the Retirement Pension which was payable to the deceased Retirement Pensioner as at the date of death and, unless the Trustee determines otherwise, the balance (if any) of the total pension remaining after deducting that maximum shall be payable in equal shares to the Eligible Children remaining from time to time.

#### 3.2 Commencement of pensions

The pension payable to an Eligible Dependant pursuant to this **paragraph 3** shall be payable from the first day of the month next following the death of the Retirement Pensioner until:

- (a) in the case of an Eligible Dependant who is or was a surviving Spouse, he or she dies; or
- (b) in the case of an Eligible Child, he or she ceases to be an Eligible Child or until earlier death.



### 3.3 Adjustments for Spouses

- (a) If the Retirement Pensioner died leaving a surviving Spouse who:
  - (i) is 15 years or more younger than the Retirement Pensioner; or
  - (ii) in the opinion of the Trustee became the Retirement Pensioner's Spouse while the Retirement Pensioner was in receipt of the Retirement Pension; or
  - (iii) in the opinion of the Trustee became the Retirement Pensioner's Spouse within twelve months prior to the Retirement Pensioner's death,

the Trustee may refuse such a Spouse or any Child of the Member and such a Spouse the pension which would otherwise be payable from the Fund to that surviving Spouse or Child pursuant to this **paragraph 3** or may reduce the pension or otherwise deal with the case having regard to the age of the Child and to the other circumstances as the Trustee may think fit.

- (b) If the Retirement Pensioner dies leaving more than one surviving Spouse, the total pension payable to them before any adjustment under **paragraph 3.3(a)** shall be determined assuming there was only one surviving Spouse and, subject to **paragraph 3.3(a)** shall be paid to such one or more of them to the exclusion of the other or others and in such proportions as the Trustee determines from time to time after the death of the Retirement Pensioner.

### 3.4 TPD Pensioner death before age 62

- (a) Notwithstanding the preceding provisions of this **paragraph 3**, if the Retirement Pensioner retired from the employ of the Employer as a result of Total and Permanent Disablement before attaining age 62 and died before attaining that age, the Trustee having regard to the circumstances of the case and after consulting the Actuary may determine that a lump sum benefit is payable as if the Retirement Pensioner had died in the employ of the Employer on the date of actual retirement.
- (b) In the event of such a determination:
  - (i) pension instalments paid to the Retirement Pensioner before the Retirement Pensioner's death;
  - (ii) any amounts paid as a result of pension commutation; and
  - (iii) the amount of any equivalent payments from the Former Fund, as notified by the Former Fund Trustee,

shall be regarded as part pre-payment of the lump sum benefit.

## 4 Lump sum on cessation of pension payments

Subject to **paragraph 3.4**, when all pension instalments payable to a Retirement Pensioner and to their Eligible Dependants (if any) have been paid, there shall be payable from the Plan as a death benefit a lump sum benefit equal to the excess (if any) of:

- (a) 5 times the amount of:
  - (i) the annual rate of Retirement Pension which was payable to the Retirement Pensioner immediately after the Retirement Pensioner ceased employment; or
  - (ii) the annual rate of retirement pension which was payable to the Retirement Pensioner as a member of the Former Fund immediately after the Retirement Pensioner ceased employment, as notified by the Former Fund Trustee,

over

- (b) the sum of:
  - (i) the total amount of pension instalments paid from the Plan to the Retirement Pensioner and their Eligible Dependants;
  - (ii) the total lump sum amounts paid from the Plan to the Retirement Pensioner and their Eligible Dependants by way of pension commutation; and
  - (iii) the total amount of equivalent payments from the Former Fund, as notified by the Former Fund Trustee.

## 5 Commutation or variation of Pensions

### 5.1 Commutation of part Retirement Pension within 30 days

A Member who is presently entitled to receive a Retirement Pension may by application to the Trustee not later than 30 days after the Member leaves the employ of the Employer (or by such later date as the Trustee may in special circumstances allow) elect to receive an immediate lump sum benefit in lieu of all or a portion of that Retirement Pension and of a like portion of any other pensions which but for this **paragraph 5.1** could become payable to other persons in respect of the Member, but the maximum portion of the Retirement Pension which may be commuted shall be the greater of:

- (a) 25% of the pension; and
- (b) the portion of the pension which would, when commuted, provide a lump sum of \$10,000,

except that, if the residual pension after commutation is or would be less than \$520.00 per annum (or such higher sum as the Trustee may determine either generally or in any particular case for the purpose of simplifying the administration of the Fund) the entire Retirement Pension may be commuted.

## **5.2 Other commutations**

- (a) Subject to such terms and conditions as the Trustee may determine and to the consent of the Beneficiary, the Trustee may determine to pay a lump sum benefit in lieu of all or a portion of the pension payable to a Beneficiary and, at the discretion of the Trustee, all or a portion of any other pension which but for this **paragraph 5.2(a)** could become payable to any other person in respect of the Beneficiary.
- (b) The Trustee may unilaterally commute to a lump sum any pension the annual amount of which is or would be \$520 or such higher sum as the Trustee may determine either generally or in any particular case for the purpose of simplifying the administration of the Fund, except a pension which became payable to the Member before 1 July 1987 as a member of the Former Fund or a Predecessor Fund (as notified by the Former Fund Trustee).

## **5.3 Actuary's advice**

The amount of any lump sum benefit payable pursuant to the preceding provisions of this **paragraph 5** and any consequential adjustment to any pension or other benefit shall be as determined by the Trustee having regard to the advice of the Actuary.



## Schedule 2

### Deferred Pension Benefits

#### 1 Transferred Deferred Pensions

##### 1.1 Amount of Transferred Deferred Pensions

- (a) The annual amount of the pension payable to a Member who is a Transferred Deferred Pensioner is:
- (i) one tenth of the Member's benefit calculated under **clause 9.1**, less any amount commuted to a lump sum before commencement of the pension;
  - (ii) multiplied by the applicable Deferral Ratio.
- (b) The Deferral Ratio applicable to a Transferred Deferred Pensioner's pension amount is:
- (i) the Deferral Factor at the Member's age when their employment with an employer in the Former Fund ceased (as notified by the Former Fund Trustee);
  - (ii) divided by the Deferral Factor at the Member's age when their pension commences.
- (c) Subject to **paragraph 1.1(d)**, the Deferral Factor is determined under the following Table, adjusted proportionately based on age in years and months:

AGE (whole years)	DEFERRAL FACTOR
45	2.980
46	2.836
47	2.697
48	2.565
49	2.438
50	2.316
51	2.200
52	2.088
53	1.982



AGE (whole years)	DEFERRAL FACTOR
54	1.879
55	1.781
56	1.688
57	1.598
58	1.511
59	1.429
60	1.350
61	1.274
62	1.201
63	1.131
64	1.064
65	1.000

- (d) The Trustee may from time to time change the Deferral Factors.

## 1.2 Benefits on death of Transferred Deferred Pensioner

- (a) If a Member who is a Transferred Deferred Pensioner dies and is survived by an Eligible Dependant or Eligible Dependents, an annual pension shall be payable to that Eligible Dependant or those Eligible Dependents, subject to the succeeding provisions of this **paragraph 1.2**.
- (b) The total annual pension payable pursuant to this **paragraph 1.2** shall be:
- (i) if the Member dies while in receipt of a pension, a percentage of the annual pension payable to the Member as at the date of death;
  - (ii) if the Member dies before the pension commences, a percentage of the annual pension amount that would have been payable to the Member under **paragraph 1.1(a)** had a pension commenced to be paid to them on the date of death,

such percentage being determined from the following table depending upon the number and type of Eligible Dependents living from time to time after the death of the Member:

Eligible Dependants	Percentage
Surviving Spouse only	60%
Surviving Spouse & 1 Eligible Child	70%
Surviving Spouse & 2 Eligible Children	80%
Surviving Spouse & 3 Eligible Children	90%
Surviving Spouse & 4 or more Children	100%
1 Eligible Child	50%
2 Eligible Children	70%
3 Eligible Children	80%
4 Eligible Children	90%
5 or more Eligible Children	100%

- (c) The maximum pension (if any) payable to the surviving Spouse at any time shall be 60% of the pension which was, or would have been, payable to the deceased Member as at the date of death and, unless the Trustee determines otherwise, the balance (if any) of the total pension remaining after deducting that maximum shall be payable in equal shares to the Eligible Children remaining from time to time.
- (d) The pension payable to an Eligible Dependant pursuant to this **paragraph 1.2** shall be payable from the first day of the month next following the death of the Member until:
- (i) in the case of an Eligible Dependant who is or was a surviving Spouse, he or she dies; or
  - (ii) in the case of an Eligible Child, he or she ceases to be an Eligible Child or until earlier death.
- (e) If the Member died leaving a surviving Spouse who:
- (i) is 15 years or more younger than the Member; or
  - (ii) in the opinion of the Trustee became the Member's Spouse while the Member was in receipt of the pension; or
  - (iii) in the opinion of the Trustee became the Member's Spouse within twelve months prior to the Member's death,

the Trustee may refuse such a Spouse or any Child of the Member and such a Spouse the pension which would otherwise be payable from the Fund to that surviving Spouse or Child pursuant to this **paragraph 1.2** or may reduce the pension or otherwise deal with the case having regard to the age of the Child and to the other circumstances as the Trustee may think fit.

- (f) If the Member dies leaving more than one surviving Spouse, the total pension payable to them before any adjustment under **paragraph 1.2(e)** shall be determined assuming there was only one surviving Spouse and, subject to **paragraph 1.2(e)** shall be paid to such one or more of them to the exclusion of the other or others and in such proportions as the Trustee determines from time to time after the death of the Member.

### **1.3 Lump sum on cessation of pension payments**

When all pension instalments payable to a Transferred Deferred Pensioner and to their Eligible Dependants (if any) have been paid, there shall be payable from the Plan as a death benefit a lump sum benefit equal to the excess (if any) of:

- (a) 5 times the amount of:
  - (i) if the Member dies while in receipt of a pension, the annual pension payable to the Member as at the date of death;
  - (ii) if the Member dies before the pension commences, the annual pension amount that would have been payable to them under **paragraph 1.1(a)** had a pension commenced to be paid to them on the date of death,over
- (b) the sum of:
  - (i) the total amount of pension instalments paid from the Plan to the Member and their Eligible Dependants; and
  - (ii) the total lump sum amounts paid from the Plan to the Member and their Eligible Dependants by way of pension commutation.

### **1.4 Commutation of Deferred Pensions**

- (a) A Transferred Deferred Pensioner may by application to the Trustee:
  - (i) at any time before the pension commences; or
  - (ii) not later than 30 days after the date the pension commences (or by such later date as the Trustee may in special circumstances allow),elect to receive an immediate lump sum benefit in lieu of all or a portion of that Deferred Pension and of a like portion of any other pensions which but for this **paragraph 1.4(a)** could become payable to other persons in respect of the Member, but the maximum portion of the deferred pension which may be commuted shall be the greater of:
  - (iii) 25% of the pension; and
  - (iv) the portion of the pension which would, when commuted, provide a lump sum of \$10,000,

except that, if the residual pension after commutation is or would be less than \$520.00 per annum (or such higher sum as the Trustee may



determine either generally or in any particular case for the purpose of simplifying the administration of the Fund) the entire deferred pension may be commuted.

- (b) Subject to such terms and conditions as the Trustee may determine and to the consent of the Beneficiary, the Trustee may determine to pay a lump sum benefit in lieu of all or a portion of the pension payable to a Beneficiary and, at the discretion of the Trustee, all or a portion of any other pension which but for this **paragraph 1.4(b)** could become payable to any other person in respect of the Beneficiary.
- (c) The Trustee may unilaterally commute to a lump sum any pension the annual amount of which is or would be \$520 or such higher sum as the Trustee may determine either generally or in any particular case for the purpose of simplifying the administration of the Fund.
- (d) The amount of any lump sum benefit payable pursuant to the preceding provisions of this **paragraph 1.4** and any consequential adjustment to any pension or other benefit shall be as determined by the Trustee having regard to the advice of the Actuary.

## **2 New Deferred Pensions**

### **2.1 Agreed terms and conditions**

- (a) The benefits to which a Deferred Pension Member (other than the Transferred Deferred Pension) is entitled and the terms and conditions upon which they shall be payable shall be as determined by the Trustee (after consulting the Actuary) and agreed to by that Member, it being a condition precedent to the acceptance of a person as a Deferred Pension Member that there be agreement between the Member and the Trustee as to the deferred benefits to be provided for and in respect of the Member.
- (b) The total value of the benefits initially secured for and in respect of a Deferred Pension Member shall not exceed the value of the Member's interest in the Fund immediately before the cessation of the Member's employment and the Trustee shall seek the advice of the Actuary to ensure that this is the case.

### **2.2 Modification of terms and conditions**

- (a) The Trustee, having regard to the advice of the Actuary and with the consent of the Deferred Pension Member, may alter or modify the benefits provided for and in respect of the Member or the terms and conditions upon which such benefits may be payable, so long as such alteration or modification does not in the opinion of the Actuary increase the total value of the benefits payable to or in respect of the Member as at the date of that alteration or modification.
- (b) In determining, altering or modifying the benefits secured for or in respect of a Deferred Pension Member or the terms and conditions upon

which the benefits will be payable, the Trustee need not apply any of the provisions of **schedule 1** relating to the method of calculating pensions, the ages at which pensions become payable, the benefits payable on the death of persons in receipt of pensions or any other matter.

### **2.3 Re-admission to membership**

Except as otherwise agreed between the Trustee, the Principal Employer and the Deferred Pension Member, if the Deferred Pension Member becomes eligible for re-admission to membership of the Fund and is re-admitted to membership:

- (a) the Member shall cease to be a Deferred Pension Member and all benefits previously secured for and in respect of the Member as a Deferred Pension Member shall be forfeited; and
- (b) the Member shall be re-admitted as a Member and shall be entitled to such additional benefits in respect of the deferred benefits forfeited pursuant to **paragraph 2.3(a)** as the Trustee, having regard to the advice of the Actuary, shall determine.

## Execution

## Execution

**Executed** as a deed.

**Executed by Sunsuper Pty Ltd**

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.....  
[Redacted Signature]

Company Secretary/Director

[Redacted Name]

Name of Company Secretary/Director  
(print)

.....  
[Redacted Signature]

Director

[Redacted Name]

Name of Director (print)

**Executed by DuluxGroup (Australia)  
Pty Ltd**

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[Redacted Signature]

Company Secretary/Director

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[Redacted Signature]

Name of Company Secretary/Director  
(print)

.....  
[Redacted Signature]

Director

1 [Redacted Name]

Name of Director (print)