

# **Roche Products Retirement Fund**

## **Deed of Amendment**

between

**Roche Products Pty Ltd**  
ACN 000 132 865

and

**Roche Products Retirement Fund Pty Limited**  
ACN 064 882 695  
RSE Licence No. L0001380

## **MERCERLEGAL**

Mercer Legal Pty Ltd  
ABN 11 081 577 632

In association with Mercer Human Resource Consulting Pty Ltd

**ROCHE PRODUCTS RETIREMENT FUND**

**DEED OF AMENDMENT**

**Between**

**ROCHE PRODUCTS PTY LTD**  
ACN 000 132 865  
("Principal Employer")

**and**

**ROCHE PRODUCTS RETIREMENT FUND PTY LIMITED**  
ACN 064 882 693  
RSB Licence No. L0001380  
("Trustee")

THIS DEED OF AMENDMENT is made the 7<sup>th</sup> of JUNE, 2006

**BETWEEN:** ROCHE PRODUCTS PTY LTD ACN 000 132 865 (RSE Licence No. L0001380)  
whose registered office is at 4-10 Inman Road, Cromer, New South Wales (the  
"Principal Employer")

**AND:** ROCHE PRODUCTS RETIREMENT FUND PTY LIMITED ACN 064 882 695  
whose registered office is at 4-10 Inman Road, Dee Why, New South Wales  
(the "Trustee")

**RECITALS:**

- A. By a trust deed dated 24 November 1967 (which deed as amended from time to time is herein called the "Trust Deed") the Principal Employer established a superannuation fund known as Roche Products Retirement Fund (the "Fund") to provide retirement and other benefits for certain of its employees.
- B. By Clause 1.16 of the Trust Deed the Trustee, with the consent of the Principal Employer, may agree to amend the provisions of the Trust Deed subject to the conditions set out in Clause 1.16.
- C. The Trustee with the consent of the Principal Employer (as evidenced by the execution of this Deed of Amendment), wishes to amend the Trust Deed in the manner set out in this deed of amendment.
- D. The Trustee and the Principal Employer are satisfied these amendments comply with Clause 1.16.

**OPERATIVE PROVISIONS:**

On and with effect from the date of this Deed of Amendment, the Trust Deed is amended as follows:

**1. Contribution splitting**

- (a) The following new definitions are inserted into Clause 1.1.1 in the appropriate alphabetical order:

"Eligible Spouse" means the spouse of a Member but does not include a person who lives separately and apart from the Member on a permanent basis.

"Eligible Spouse Contribution" has the same meaning as in Section 159TC of the Tax Act.

"Receiving Spouse" has the meaning given to those words as defined under the Superannuation Industry (Supervision) Regulations 1994.

"Splittable Contribution" has the meaning given to those words as defined under the Superannuation Industry (Supervision) Regulations 1994."

- (b) A new Rule 1.13.10 is inserted as follows:

**"1.13.10 Contribution Splitting**

- (a) A Member may apply to the Trustee to:
  - (i) allot all or part of the Splittable Contributions attributable to them for the benefit of their Receiving Spouse; and
  - (ii) transfer them for the benefit of their Receiving Spouse:
    - (A) to an account established in respect of the Receiving Spouse within the Fund; or
    - (B) to any Other Fund in accordance with Clause 1.14.13 (hereinafter, a "contribution split").
- (b) The Trustee may make such rules for the expedient administration of contribution splits, including, but not limited to the date from which Contribution Splits will be permissible, the power to limit amounts that can be subject to a contribution split.
- (c) The Trustee may accept an application for a contribution split only if the application satisfies the rules made under Clause 1.13.10(b) and complies with the Relevant Law.
- (d) If the Trustee accepts an application for a contribution split, the Trustee may:
  - (i) make such adjustments to the accounts maintained in respect of the Member as it considers appropriate, including the debiting of any expenses that the Trustee believes it has incurred or reasonably will occur in processing the contribution split; and
  - (ii) adjust the benefits of the Member, including any insured amount, or reclassify the Member pursuant to clause 1.12.14, to take account of the contribution split as it considers appropriate."

**2. Portability**

- (a) Clause 1.14.13(a) is amended by inserting the following words at the end of the first sentence before the colon:

"on such terms and conditions as determined by the Trustee".
- (b) Clause 1.14.13 is amended by inserting a new paragraph (d) as follows:

"(d) The Trustee of the Fund may adjust the benefits of any Member, including any insured amount, or reclassify any Member pursuant to clause 1.12.14, to take account of the payment or transfer out of the Fund pursuant to clause 1.14.13(a), (b) or (c) in such manner as it considers appropriate."

**3. Spouse Members**

- (a) Clause 1.1.1 is amended by inserting the following new definition in appropriate alphabetical order:

““Spouse Member” means a member to whom Part 8 of the Trust Deed applies and includes a Non-Member Spouse, Receiving Spouse and Eligible Spouse.”

- (b) The definition of “Section” in clause 1.1.1 is amended by deleting the comma after reference to “Part 7” and inserting the following words in its place:

“or the Spouse Member Section contained in Part 8.”

- (c) Clause 1.12.1 is amended by adding a new sub-clause (d) as follows:

“(d) The Trustee may admit to membership of the Fund:

- (iii) a Non-Member Spouse;
- (iv) an Eligible Spouse; and
- (v) a Receiving Spouse.”

- (d) Clause 2.1.1(a) is amended by deleting the words “and a Retained Benefit Account” and inserting the words “Retained Benefit Account and Spouse Member Account” in their place.

- (e) A new clause 2.1.9 is inserted after clause 2.1.8 as follows:

**“2.1.9 Spouse Account**

The following amounts may be credited to a Spouse Member's Account subject to the Relevant Law:

- (a) any amounts attributed to the Spouse Member;
- (b) any amount which the Spouse Member transfers or rolls over from any Other Fund;
- (c) any amount credited to this account under clause 2.2.2;
- (d) any other amount which the Trustee and the Principal Employer agree is appropriate to credit to this Account,

and the following amounts must be debited to a Spouse Member's Account:

- (e) any amount debited to this Account under clause 2.3.3;
- (f) any amount which the Trustee determines to debit to this Account because of a transfer out of this Fund;
- (g) the portion of any benefit paid from this Account under this Deed; and

- (h) any other amount which this Deed requires to be debited to this Account or the Trustee considers it appropriate and equitable to debit to this Account,

and interest must be allocated to this Account under clause 2.4."

**4. Family Law**

- (a) Sub-clauses 1.3A(1)(a) and (b) are deleted and the following new sub-clauses inserted in their place:
- "(1) (a) If a Non-Member Spouse applies for membership, the Trustee may admit a Non-Member Spouse as a Spouse Member and do any acts, matters or things that are necessary or desirable to give effect to that membership, including creating a new interest in the Fund for or in respect of the Spouse Member.
- (b) If a Non-Member Spouse does not apply for membership, the Trustee may create a new interest in the Fund for or in respect of a Non-Member Spouse.
- (c) Notwithstanding sub-clauses 1.3A(1)(a) and (b), a Non-Member Spouse shall not be admitted as a Spouse Member of the Fund or have any benefits paid to them from the Fund if to do so would change the Fund's status to that of a public offer superannuation fund (as that term is defined under Relevant Law)."
- (b) Sub-clause 1.3A(2)(d)(i) is deleted and the following new sub-clause inserted in its place:
- "(i) transferring all the lump sum amount which the Trustee considers represents the Transferable Benefit in respect of the Non-Member Spouse (or such other amendment as the Trustee may determine) to an Other Fund subject to and in accordance with the requirements of the Relevant Law; or".
- (d) Sub-clause 1.3A(2)(d)(iv) is amended by:
- (i) deleting from the commencement of the sub-clause the words "where subparagraph (2)(d)(iii) does not apply, "; and
- (ii) deleting from the end of the sub-clause the words "in accordance with subparagraph (2)(d)(i) or (2)(d)(ii) above" and inserting in their place the words "as required or permitted by the Relevant Law".
- (e) Sub-clause 1.3A(3)(a) is deleted and the following new sub-clause inserted in its place:
- "(3) (a) Any Non-Member Spouse for whom a new interest is not created and who is not made or admitted as a Member of the Fund under clause 1.3A(1) shall have any amount determined in respect of them as a Non-Member Spouse under clause 1.3A(2)(c) dealt with as provided in clause 1.3A(2)(d)(i), (ii), (iii) or (iv), as determined by the Trustee."

5. **Part 8: Spouse Members**

A new Part 8 is inserted as follows:

**"PART 8**

**SPOUSE MEMBERS SECTION**

**8.1 Application**

The provisions of this Part shall apply to Spouse Members.

**8.2 Contributions**

**8.2.1 Subject to clause 8.2.2:**

- (a) a Spouse Member may, with the consent of the Trustee, make contributions to the Fund;
- (b) the Trustee may accept Eligible Spouse Contributions in respect of a Spouse Member; but
- (c) no Employer or other person may make contributions in respect of a Spouse Member.

**8.2.2 A Spouse Member may transfer or roll over into the Fund any amount from any Other Fund.**

**8.3 Investment choice option**

A Spouse Member may, with the consent of the Trustee, elect to invest their Spouse Member Account in the same manner as set out in clause 2.5 in any one or more special portfolios.

**8.4 Insurance**

No insurance shall be provided by the Fund for Spouse Members.

**8.5 Benefits**

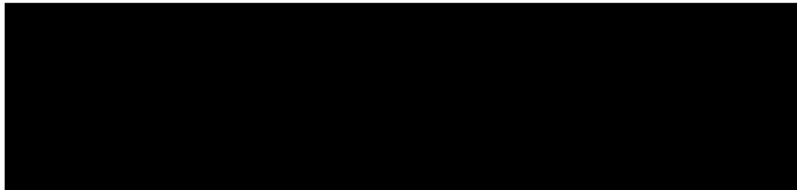
A Spouse Member may be paid his or her Member's Total Account Balance if Relevant Law permits and must be paid his or her Total Account Balance if Relevant Law requires."

6. **Other amendments**

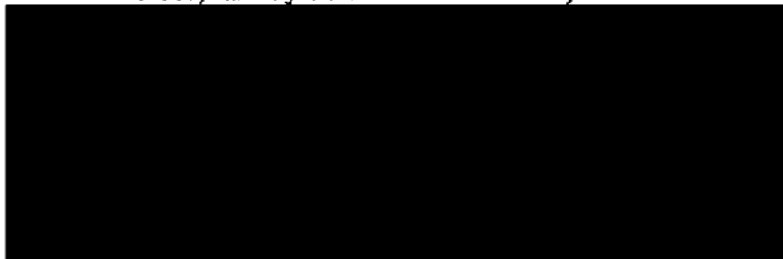
Clauses 1.4.4 to 1.4.11 inclusive and clause 1.5.4 are deleted.

**EXECUTED** as a Deed.

**THE COMMON SEAL of ROCHE** )  
**PRODUCTS PTY LTD ACN 000 132 865** )  
was duly affixed to this deed in the presence of: )



**THE COMMON SEAL of ROCHE** )  
**PRODUCTS RETIREMENT FUND PTY** )  
**LIMITED ACN 064 882 695 (RSE Licence** )  
**No. L0001380) was duly affixed to this deed in** )



**Roche Products Retirement Fund**

**Deed of Amendment**

between

**Roche Products Pty Ltd**  
ACN 000 132 865

and

**Roche Products Retirement Fund Pty Limited**  
ACN 064 882 695

**MERCERLEGAL**

Mercer Legal Pty Ltd  
ABN 11 091 577 632

In association with Mercer Human Resource Consulting Pty Ltd

**ROCHE PRODUCTS RETIREMENT FUND**

**DEED OF AMENDMENT**

**Between**

**ROCHE PRODUCTS PTY LTD**  
ACN 000 132 865  
("Principal Employer")

**and**

**ROCHE PRODUCTS RETIREMENT FUND PTY LIMITED**  
ACN 064 882 695  
("Trustee")

THIS DEED OF AMENDMENT is made the 1<sup>st</sup> day of June 2005

**BETWEEN:** ROCHE PRODUCTS PTY LTD ACN 000 132 865 whose registered office is at 4-10 Inman Road, Cromer, New South Wales (the "Principal Employer")

**AND:** ROCHE PRODUCTS RETIREMENT FUND PTY LIMITED ACN 064 882 695 whose registered office is at 4-10 Inman Road, Dee Why, New South Wales (the "Trustee")

**RECITALS:**

- A. By a trust deed dated 24 November 1967 (which deed as amended from time to time is herein called the "Trust Deed") the Principal Employer established a superannuation fund known as Roche Products Retirement Fund (the "Fund") to provide retirement and other benefits for certain of its employees.
- B. By Clause 1.16 of the Trust Deed the Trustee, with the consent of the Principal Employer, may agree to amend the provisions of the Trust Deed subject to the conditions set out in Clause 1.16.
- C. The Trustee with the consent of the Principal Employer (as evidenced by the execution of this Deed of Amendment), wishes to amend the Trust Deed in the manner set out in this deed of amendment.
- D. The Trustee and the Principal Employer are satisfied these amendments comply with Clause 1.16.

**OPERATIVE PROVISIONS:**

With effect from 1 July 2005, the Trust Deed is amended as follows:

- 1. Clause 1.1.1 is amended by inserting the following new definitions in appropriate alphabetical order:

"**Binding Nomination Form**" means a notice in such form and manner as determined by the Trustee, completed by a Member and provided to the Trustee in accordance with the Relevant Law and Clause 1.14.7, nominating one or more persons as the beneficiary or beneficiaries of any benefit payable on or after the death of a Member, and includes any such notice as confirmed or amended under the Relevant Law, but does not include any such notice revoked under the Relevant Law.

"**Legal Personal Representative**" has the same meaning as defined in the Superannuation (Industry) Supervision Act 1993.

"**Retained Member**" means a Member whose benefit is retained in the Fund pursuant to Part 7.

"**Retained Benefit Account**" means the account of that name established pursuant to Clause 2.1.8."

2. The definition of "Section" in clause 1.1.1 is amended by deleting the comma after the reference to "Part 6" and inserting the following words in its place:

"or the Retained Benefit Section contained in Part 7".

3. Clause 1.14.2(a) is amended by:

- (a) inserting after the word "may" in the first line the following:

", upon request from a Member";

- (b) inserting the following words at the end of the first paragraph after the word "Employment":

", or in the case of a Retained Member, the balance of their Retained Benefit Account";

- (c) deleting the semicolon and the word "and" at the end of sub-paragraph (ii) and inserting a full stop in their place;

- (d) deleting sub-paragraph (iii) in its entirety.

3. Clause 1.14.7 is deleted and the following clause inserted in its place:

**"1.14.7 Payment of Death Benefits**

- (a) If a benefit is payable on or after the death of a Member and a Binding Nomination Form is valid and in effect, the Trustee must pay the benefit in accordance with the Binding Nomination Form.

- (i) The Trustee must determine that the Binding Nomination Form is invalid if:

- (A) any person nominated in the Binding Nomination Form is neither a Dependant nor the Legal Personal Representative of the Member;
- (B) the proportion of the benefit to be paid to any person nominated in the Binding Nomination Form is not certain or readily ascertainable from the Binding Nomination Form;
- (C) the Binding Nomination Form is not in the form required by the Trustee from time to time;
- (D) any person nominated in the Binding Nomination Form dies before their nominated proportion of the benefit is paid;
- (E) the Member made the nomination when legally incapable of doing so;
- (F) it is unlawful for the Trustee to pay the benefit to any person nominated in the Binding Nomination Form;

(G) three years (or a shorter period determined by the Trustee) has elapsed from the day it was signed or last confirmed or amended by the Member; or

(H) the Binding Nomination Form is not in accordance with the Relevant Law.

(ii) The Trustee may declare that the Binding Nomination Form is invalid for other reasons it may determine from time to time.

(b) Any benefit which is:

(i) payable on or after the death of a Member; and

(ii) not required under Clause 1.14.7(a) to be paid to a specific person, must be paid to:

(A) one or more of the Member's Dependants; and/or

(B) the Member's Legal Personal Representative,

in such manner and proportions as the Trustee determines **PROVIDED THAT** if no Dependant or Legal Personal Representative of the Member has been located the benefit may be paid to any other person the Trustee determines as permitted by the Relevant Law."

5. Clause 2.1.1 (a) is amended by deleting the words "and a Surcharge Account" and inserting the following words in their place:

" , Surcharge Account and a Retained Benefit Account"

6. The following new clause is inserted after clause 2.1.7:

**"2.1.8 Retained Benefit Account**

The following amounts must be credited to a Retained Member's Retained Benefit Account:

(a) all or part of the benefit payable to a Retained Member on ceasing Employment;

(b) any amounts credited to this Account under clause 2.2.2.; and

(c) any other amount which the Trustee determines is appropriate to credit to this Account,

and the following amounts must be debited to a Retained Member's Retained Benefit Account:

(a) any amount debited to this Account under clause 2.3.3;

(b) any amount which the Trustee determines to debit to this Account because of a transfer out of the Fund; and

- (c) any other amount which the Deed requires to be debited to this Account or which the Trustee determines is appropriate to debit to this Account.

and interest must be allocated to this Account under clause 2.4."

7. The following new Part 7 shall be added to the Deed after Part 6:

**"PART 7: RETAINED BENEFITS**

**7.1 Application**

The provisions of this Part shall apply to Retained Members.

**7.2 Retained Members**

- (a) Subject to the Relevant Law, a Member who on ceasing Employment is entitled to a benefit from the Fund which exceeds an amount from time to time determined by the Trustee, shall remain in the Fund as a Retained Member unless the Member otherwise directs the Trustee to pay or transfer their benefit out of the Fund.
- (b) Notwithstanding clause 7.2(a) the Trustee reserves the right to refuse to accept a Member as a Retained Member or to accept them subject to special terms and conditions.

**7.3 Retained Benefits**

- 7.3.1 Subject to the Relevant Law, the Trustee shall establish and maintain a Retained Benefit Account pursuant to clause 2.1.8 in respect of each Retained Member.
  - 7.3.2 A Retained Member shall upon request be entitled to the balance of their Retained Benefit Account which shall be paid to them or otherwise transferred out of the Fund as they direct.
  - 7.3.3 In the event a Retained Member dies the balance of their Retained Benefit Account shall be paid in accordance with clause 1.14.7.
  - 7.3.4 Notwithstanding the above, the Trustee may at any time decide that the whole of a Retained Member's Retained Benefit Account be paid to the Retained Member or otherwise transferred out of the Fund in such manner as the Trustee determines.
  - 7.3.2 A Retained Member may request the Trustee at any time to pay part or all of any unrestricted non-preserved component of their Retained Benefit Account to them. The payment of any benefit in accordance with this Clause will be entirely at the Trustee's discretion. Any withdrawal must not reduce the Member's Retained Benefit Account below the required minimum from time to time determined by the Trustee, unless it is a withdrawal of the full balance.
- 7.4 Investment Choice Option**
- A Retained Member may, with the consent of the Trustee, elect to invest their Retained Benefit Account in the manner as set out in clause 2.5 in one or more Special Portfolios.

**7.5 Contributions**

The Trustee may, subject to the Relevant Law and any conditions or restrictions it considers appropriate accept contributions from a Retained Member or any other person for and on behalf of a Retained Member and shall apply such contributions to or for the benefit of the Retained Member in such manner as it considers appropriate.

**7.6 Insurance**

No insurance cover shall be provided by the Fund for Retained Members.

**7.7 Recommencement of Service**

In the event an Employer recommences making contributions to the Fund (as a result of the Retained Member recommencing Employment), the Retained Member shall be terminated as a Retained Member and the balance of their Retained Benefit Account transferred to the part of the Fund applicable to their new category of membership."

**EXECUTED** as a Deed.

**THE COMMON SEAL of ROCHE** )  
**PRODUCTS PTY LTD ACN 000 132 865** )  
was duly affixed to this deed in the presence of: )



**THE COMMON SEAL of ROCHE** )  
**PRODUCTS RETIREMENT FUND PTY** )  
**LIMITED ACN 064 882 695** was duly affixed )  
to this deed in the presence of: )



( )

( )

**ROCHE PRODUCTS RETIREMENT FUND**

**DEED OF AMENDMENT**

**Between**

**ROCHE PRODUCTS PTY LTD**  
ACN 000 132 865  
("Principal Employer")

**and**

**ROCHE PRODUCTS RETIREMENT FUND PTY LIMITED**  
ACN 064 882 695  
("Trustee")

THIS DEED OF AMENDMENT is made the twenty fourth day of December 2002

BETWEEN: ROCHE PRODUCTS PTY LTD ACN 000 132 865 whose registered office is at  
4-10 Inman Road, Cromer, New South Wales (the "Principal Employer")

AND: ROCHE PRODUCTS RETIREMENT FUND PTY LIMITED  
ACN 064 882 695 whose registered office is at 4-10 Inman Road, Cromer,  
New South Wales (the "Trustee")

**RECITALS:**

- A. By a trust deed dated 24 November 1967 (the "Trust Deed") the Principal Employer established a superannuation fund known as Roche Products Retirement Fund (the "Fund") to provide retirement and other benefits for certain of its employees.
- B. By Clause 1.16 of the Trust Deed the Trustee, with the consent of the Principal Employer, may agree to amend the provisions of the Trust Deed subject to the conditions set out in Clause 1.16.
- C. The Trustee with the consent of the Principal Employer (as evidenced by the execution of this Deed of Amendment), wishes to amend the Trust Deed in the manner set out in the Operative Part below.
- D. The Trustee and the Principal Employer are satisfied these amendments comply with Clause 1.16.

**OPERATIVE PROVISIONS:**

With effect from the date of the deed of amendment, the Trust Deed is amended as follows:

- 1. By deleting the definition of "Relevant Law" in Clause 1.1.1 and replacing it with the following:

"Relevant Law" means the requirements set out in:

- (a) the Superannuation Industry (Supervision) Act 1993 ("SIS");
- (b) the Corporations Act 2001;
- (c) the Income Tax Assessment Act 1936;
- (d) the Income Tax Assessment Act 1997;
- (e) the Superannuation (Self Managed Superannuation Funds) Entities Taxation Act 1987;
- (f) A New Tax System (Goods and Services Tax) Act 1999;
- (g) the Superannuation (Resolution of Complaints) Act 1993;
- (h) the Superannuation Contributions Tax (Assessment and Collection) Act 1997;
- (i) the Superannuation Contributions Imposition Act 1997;
- (j) the Family Law Act 1975;
- (k) any regulations made under any of those Acts; and
- (l) any other law which the Trustee and the Principal Employer agree is a Relevant Law for the purposes of this Deed."

2. By inserting the following definitions in Clause 1.1.1 in the appropriate alphabetical order:

"Non-Member Spouse" has the meaning given to those words as defined under Part VIIIB of the Family Law Act 1975.

"Superannuation Interest" has the meaning given to those words as defined under Part VIIIB of the Family Law Act 1975.

"Transferable Benefit" means transferable benefit as that term is defined under the Superannuation Industry (Supervision) Regulations 1993."

3. By adding the following words to the end of the definitions of "Contributory Member" and "Non-Contributory Member" in Clause 1.1.1:

" Clause 6.1(b) or Clause 6.1(c)".

4. By adding the following sentence at the end of the definition of "Member" in Clause 1.1.1:

"For the avoidance of doubt, a person is not taken to be a Member merely because they are a Non-Member Spouse."

5. By adding the following words after the words "in Part 5" in the definition of "Section" in Clause 1.1.1:

"or the Members on or after 1 January 2003 Section contained in Part 6".

6. By inserting the following new Clause 1.3A immediately after Clause 1.3:

**"1.3A FAMILY LAW**

- (1) (a) Subject to paragraph (b), the Trustee must not create a new interest in the Fund for or in respect of a Non-Member Spouse under this Clause 1.3A or make a Non-Member Spouse a Member of the Fund.
- (b) A Non-Member Spouse to whom this Clause applies and who is a Member shall continue as a Member for the purposes of this Deed other than in respect of any amount determined under this Clause 1.3A in respect of the Non-Member Spouse unless otherwise decided by the Trustee pursuant to Clause 1.3A(2)(d)(iii).
- (2) Notwithstanding any other provisions of the Deed, but subject to Clause 1.3.1, the Trustee is empowered to do or to procure to be done any acts, matters or things that are necessary or desirable in order to comply with the Relevant Law including (but not limited to):
- (a) providing information related to a Member's Superannuation Interest in the Fund in accordance with and as required by the Relevant Law;

- (b) flagging a Member's Superannuation Interest or lifting a flag on a Member's Superannuation Interest or benefit in the Fund where and as required by the Relevant Law;
- (c) adjusting or reducing any Member's Superannuation Interest (including any insured benefit) or any other benefit in respect of a Member in the Fund to take account of any amount the Trustee considers represents the amount to which a Non-Member Spouse is entitled being calculated having regard to the requirements of the Relevant Law and any acts, matters or things done pursuant to this Clause 1.3A;
- (d) subject to sub-paragraph (c):
  - (i) transferring all the lump sum amount which the Trustee considers represents the Transferable Benefit in respect of the Non-Member Spouse (or such other amount as the Trustee may determine) to a superannuation fund or other benefit arrangement including without limitation a complying superannuation fund, an approved deposit fund or an eligible rollover fund subject to and in accordance with the requirements of the Relevant Law whether with or without the consent of the Non-Member Spouse; or
  - (ii) paying to or in respect of the Non-Member Spouse an amount which the Trustee considers represents the lump sum amount to which the Non-Member Spouse is entitled (or such other amount as the Trustee may determine) subject to and in accordance with the requirements of the Relevant Law; or
  - (iii) where a Non-Member Spouse is a Member, the Trustee may transfer all of the lump sum amount which the Trustee considers represents the Transferable Benefit in respect of the Non-Member Spouse (or such other amount as the Trustee may determine) to an account held or established in respect of the Non-Member Spouse within the Fund on such basis, terms and conditions as the Trustee may determine (including allocating any investment earnings under the Deed and imposing fees incurred under sub-paragraph (2)(e) below) until the Trustee determines to pay or transfer from the Fund in accordance with sub-paragraph (2)(d)(i) or (2)(d)(ii) above; or
  - (iv) where sub-paragraph (2)(d)(iii) does not apply, recording in the Fund the amount that the Trustee considers represents the amount to which the Non-Member Spouse is entitled under sub-paragraph (2)(c) of this Clause and adjusting or doing any other act, matter or thing in respect of that record until the Trustee determines to pay or transfer that amount from the Fund in accordance with sub-paragraph (2)(d)(i) or (2)(d)(ii) above;

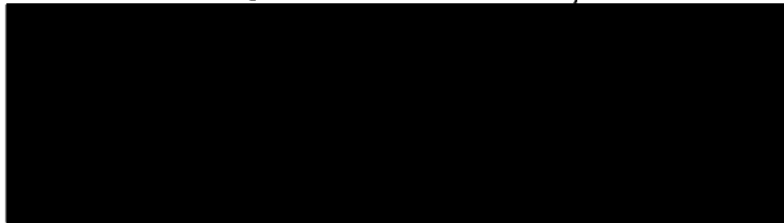
- (e) imposing any fees, (including charges, taxes or other costs) in relation to any acts, matters or things done by the Trustee under this Clause 1.3A on such terms and conditions as the Trustee determines (including by deduction from any Member's account, interest or benefit in the Fund or the Non-Member Spouse's amount to which he or she is entitled) subject to the Relevant Law.
  - (3)
    - (a) Except where a Non-Member Spouse is a Member, a Non-Member Spouse is not a Member or eligible to be a Member.
    - (b) For the purposes of this Clause 1.3A and any amount determined under this Clause a Non-Member Spouse only has rights to information and other rights as prescribed by the Relevant Law and under this Clause 1.3A and has no other rights, claims or entitlements against the Fund, the Trustee (or any person acting on behalf of the Trustee) under the Deed."
7. By adding a new Clause 1.14.13(c) after Clause 1.14.13(b) as follows:
- "1.14.13 (c) The Trustee of the Fund may transfer all or part of the lump sum amount which the Trustee considers represents the Transferable Benefit in respect of a Non-Member Spouse to an eligible rollover fund (as that term is defined in the Relevant Law) of the Trustee's choice."
8. By deleting in their entirety the following Parts:
- Part 3: Contributory Members Section;
- Part 4: Non-Contributory Members Section; and
- Part 5: Special Ex-plan Members Section
- and replacing them with the provisions marked "A" attached to this Deed of Amendment.
9. By inserting a new Part 6 to the Deed, the provisions of which are headed "Part 6: Members on or after 1 January 2003" and as detailed in the document marked "B" attached to this Deed of Amendment.

**EXECUTED AS A DEED**

THE COMMON SEAL of ROCHE )  
 PRODUCTS PTY LTD ACN 000 132 865 )  
 was duly affixed to this deed in the presence of: )



THE COMMON SEAL of ROCHE )  
PRODUCTS RETIREMENT FUND PTY )  
LIMITED ACN 064 882 695 was duly affixed )  
to this deed in the presence of: )



"A"

### PART 3: CONTRIBUTORY MEMBERS SECTION

#### 3.1 APPLICATION

- (a) The provisions of this Section shall apply to and in respect of any person who is for the time being a Contributory Member, and who has not become a Member of Part 6 in accordance with Clause 6.1(b) or Clause 6.1 (c).
- (b) This Part 3 is closed to new Members of the Fund on and from 1 January 2003.

#### 3.2 CONTRIBUTORY MEMBERS

Unless the context otherwise requires, a reference to a Member in this Part 3 shall be a reference to a Contributory Member.

#### 3.3 EMPLOYER CONTRIBUTIONS

##### 3.3.1 General

Each Employer must contribute to this Fund:

- (a) in respect of each Member in its Employment;
- (b) the amount specified in Clause 3.3.2;
- (c) for each pay period that the Member is:
  - (i) actively at work;
  - (ii) absent on approved annual or other paid leave;
  - (iii) absent on long service leave; or
  - (iv) absent from work for any other reason where that Employer agrees to contribute.

##### 3.3.2 Rate of Employer Contribution

- (a) The amount of an Employer contribution is:
  - (i) the amount the Employer and the Trustee agree is required to meet the Minimum SG Benefit; and
  - (ii) the additional amount required to bring the Employer's total contribution to a level of:
    - (A) 12% of the Member's Salary; or
    - (B) any other level the Principal Employer determines.

### 3.4.1 Basic Contribution

### 3.4.2 Cessation of Basic Contributions

### 3.4.3 Voluntary Contribution

- (a) with the consent of the Principal Employer; and
- (b) subject to such terms, conditions and restrictions as are imposed by the Principal Employer or the Trustee,

### 3.5 BENEFITS

### 3.5.1 Death or Total and Permanent Disablement

(a) if a Member:

- (i) dies while in Employment; or
- (ii) leaves Employment because of Total and Permanent Disablement,

before reaching age 65 the Trustee must pay:

(iii) the greater of:

(A) 17.5% x S x MP

where S = Salary at Date of Death

MP = the number of years (with complete months counted as fractions of a year) from the Date Joined Contributory Membership until the Member's Normal Retirement Date

and

(B) the sum of the Member's Member Account and Company Account,

PLUS

(iv) the sum of the Member's Rollover Account, Voluntary Account, Plan Transfer Account and Surcharge Account.

(b) If a Member, who has not received a benefit under Clause 3.5.3:

(i) dies while in Employment; or

(ii) leaves Employment because of Total and Permanent Disablement,

on or after reaching age 65 the Trustee must pay the Member's Total Account Balance.

### 3.5.2 Leaving Employment

A Member who:

(a) leaves Employment; and

(b) is not entitled to any other benefit under this Part 3,

is entitled to a benefit (part of which may have to be preserved) equal to the Member's Total Account Balance.

### 3.5.3 Payment on or after age 65 and age 75

(a) A Member who remains in Employment after reaching age 65 and who has not reached age 75 may, and if working less than 10 hours per week, must be paid a benefit equal to the portion of the Member's Total Account Balance:

(i) which relates to contributions made before the Member reaches age 65, on the Required Payment Date; and

(ii) which relates to contributions made after the Member reaches age 65, on any other Required Payment Date (which may be different from the date mentioned in paragraph (i)).

(b) A Member who remains in Employment after reaching age 75 may, and if working less than 30 hours per week must, be paid a benefit equal to the Member's Total Account Balance on the Required Payment Date.

## **PART 4: NON-CONTRIBUTORY MEMBERS SECTION**

### **4.1 APPLICATION**

- (a) The provisions of this Section shall apply to and in respect of any person who is for the time being a Non-Contributory Member and who has not become a Member of Part 6 in accordance with Clause 6.1(b) or Clause 6.1(c).
- (b) This Part 4 is closed to new Members of the Fund from 1 January 2003.

### **4.2 NON-CONTRIBUTORY MEMBERS**

Unless the context otherwise requires, a reference to a Member in this Part 4 shall be a reference to a Non-Contributory Member.

### **4.3 EMPLOYER CONTRIBUTIONS**

#### **4.3.1 General**

Each Employer must contribute to this Fund:

- (a) in respect of each Member in its Employment;
- (b) the amount specified in Clause 4.3.2;
- (c) for each pay period that the Member is:
  - (i) actively at work;
  - (ii) absent on approved annual or other paid leave;
  - (iii) absent on long service leave; or
  - (iv) absent from work for any other reason where that Employer agrees to contribute.

#### **4.3.2 Rate of Employer Contribution**

- (a) The amount of an Employer contribution is:
  - (i) the amount the Employer and the Trustee agree is required to meet the Minimum SG Benefit; and
  - (ii) any additional amount the Principal Employer determines.

### **4.4 MEMBER CONTRIBUTIONS**

#### **4.4.1 No Requirement to Contribute**

Members are not required to contribute to this Fund.

#### 4.4.2 Commence to make Basic Contributions

With effect from any date agreed between the Employer, the Trustee and the Member, a Member may commence to contribute Basic Contributions to the Fund at the rate of 6% of Salary, in which case the Member ceases to be a Non-Contributory Member and becomes a Member of Part 6 in accordance with Clause 6.1 (c).

#### 4.4.3 Voluntary Contribution

A Member may make contributions to this Fund:

- (a) with the consent of the Principal Employer; and
- (b) subject to such terms, conditions and restrictions as are imposed by the Principal Employer or the Trustee,

these contributions are referred to as "Voluntary Contributions".

### 4.5 BENEFITS

#### 4.5.1 Death or Total and Permanent Disablement

- (a) If a Member:
  - (i) dies while in Employment; or
  - (ii) leaves Employment because of Total and Permanent Disablement,before reaching age 65 the Trustee must pay:
  - (iii) the Member's Total Account Balance; plus
  - (iv) any amount of Group Life Insurance paid to this Fund by an Insurer on the death or Total and Permanent Disablement of the Member.

- (b) If a Member, who has not received a benefit under Clause 4.5.3:

- (i) dies while in Employment; or
- (ii) leaves Employment because of Total and Permanent Disablement,

on or after reaching age 65 the Trustee must pay the Member's Total Account Balance.

#### 4.5.2 Leaving Employment

A Member who:

- (a) leaves Employment; and
- (b) is not entitled to any other benefit under this Part 4,

is entitled to a benefit (part of which may have to be preserved) equal to the Member's Total Account Balance.

#### 4.5.3 Payment on or after age 65 and age 75

- (a) A Member who remains in Employment after reaching age 65 and who has not reached age 75 may, and if working less than 10 hours per week, must be paid a benefit equal to the portion of the Member's Total Account Balance:
  - (i) which relates to contributions made before the Member reaches age 65, on the Required Payment Date and
  - (ii) which relates to contributions made after the Member reaches age 65, on any other Required Payment Date (which may be different from the date mentioned in paragraph (i)).
- (b) A Member who remains in Employment after reaching age 75 may, and if working less than 30 hours per week must, be paid a benefit equal to the Member's Total Account Balance on the Required Payment Date.

## PART 5: SPECIAL EX-PLAN MEMBERS SECTION

### 5.1 APPLICATION

The provisions of this Section shall apply to and in respect of all persons who are Special Ex-Plan Members and who have not become Members of Part 6 in accordance with Clause 6.1(b) or Clause 6.1(c).

### 5.2 SPECIAL EX-PLAN MEMBERS

Unless the context otherwise requires, a reference to a Member in this Part 5 shall be a reference to a Special Ex-Plan Member.

### 5.3 EMPLOYER CONTRIBUTIONS

#### 5.3.1 General

Each Employer must contribute to this Fund:

- (a) in respect of each Member in its Employment;
- (b) the amount specified in Clause 5.3.2;
- (c) for each pay period that the Member is:
  - (i) actively at work;
  - (ii) absent on approved annual or other paid leave;
  - (iii) absent on long service leave; or
  - (iv) absent from work for any other reason where that Employer agrees to contribute.

#### 5.3.2 Rate of Employer Contribution

- (a) The amount of an Employer contribution is:
  - (i) the amount the Employer and the Trustee agree is required to meet the Minimum SG Benefit; and
  - (ii) the additional amount required to bring the Employer's total contribution to a level of:
    - (A) 15% of the Member's Salary; or
    - (B) any other level the Principal Employer determines.

#### 5.4 MEMBER CONTRIBUTIONS

##### 5.4.1 Basic Contributions

Each Member must contribute to this Fund at such rate, being not less than 4% nor more than 6% of Salary, as the Member shall nominate with effect from any date agreed between the Employer, the Trustee and the Member. These contributions are referred to as "Basic Contributions".

##### 5.4.2 Variation of Basic Contributions

With effect from any date agreed between the Employer, the Trustee and the Member, a Member may cease to make Basic Contributions or, subject to Clause 5.4.1, commence to contribute or vary the rate of Basic Contributions to the Fund.

##### 5.4.3 Cessation of Basic Contributions

Where, with effect from any date agreed between the Employer, the Trustee and the Member, a Member ceases to make Basic Contributions to the Fund, the Member ceases to be a Special Ex-Plan Member and becomes a Member of Part 6 in accordance with Clause 6.1 (c).

##### 5.4.4 Voluntary Contribution

In addition to any Basic Contributions a Member may make, a Member may make additional contributions to this Fund:

- (a) with the consent of the Principal Employer; and
- (b) subject to such terms, conditions and restrictions as are imposed by the Principal Employer or the Trustee,

these contributions are referred to as "Voluntary Contributions".

#### 5.5 BENEFITS

##### 5.5.1 Death or Total and Permanent Disablement

- (a) If a Member:

- (i) dies while in Employment; or
- (ii) leaves Employment because of Total and Permanent Disablement, before reaching age 65 the Trustee must pay:

- (iii) the greater of:

$$(A) \quad 17.5\% \times S \times MP$$

where S = Salary at Date of Death

and

PLUS

**PLUS**

(b) If a Member, who has not received a benefit under Clause 5.5.3;

(i) dies while in Employment; or

(ii) leaves Employment because of Total and Permanent Disablement,

on or after reaching age 65 the Trustee must pay the Member's Total Account Balance.

**A Member who:**

(a) leaves Employment; and

(b) is not entitled to any other benefit under this Part 5,

is entitled to a benefit (part of which may have to be preserved) equal to the Member's Total Account Balance.

(a) A Member who remains in Employment after reaching age 65 and who has not reached age 75 may, and if working less than 10 hours per week, must be paid a benefit equal to the portion of the Member's Total Account Balance:

(ii) which relates to contributions made before the Member reaches age 65, on the Required Payment Date and

- 9.

“B”

**PART 6: MEMBERS ON OR AFTER 1 JANUARY 2003**

## 6.1 APPLICATION

The provisions of this Section shall apply to and in respect of:

- (a) any person who becomes a Member of the Fund on or after 1 January 2003;
- (b) a Contributory Member, Non-Contributory Member or Special Ex-Plan Member who joined the Fund on or before 31 December 2002 and who has elected to have a Death and/or Total and Permanent Disablement benefit calculated under the provisions of Clause 6.4.1; and
- (c) a Contributory Member, Non-Contributory Member or Special Ex-Plan Member who joined the Fund on or before 31 December 2002 and who has elected to commence or cease making Basic Contributions.

## 6.2 EMPLOYER CONTRIBUTIONS

### 6.2.1 General

**Each Employer must contribute to this Fund:**

- (a) in respect of each Member in its Employment;
- (b) the amount specified in Clause 6.2.2;
- (c) for each pay period that the Member is:
  - (i) actively at work;
  - (ii) absent on approved annual or other paid leave;
  - (iii) absent on long service leave; or
  - (iv) absent from work for any other reason where that Employer agrees to contribute.

### 6.2.2 Rate of Employer Contribution

The amount of an Employer contribution is:

- (a) the amount the Employer and the Trustee agree is required to meet the Minimum SG Benefit; and
- (b) the additional amount required to bring the Employer's total contribution to a level of:
  - (A) where a Member has not elected under Clause 6.3.3 to cease making contributions under Clause 6.3.2, 12% of the Member's Salary or
  - (B) any other level the Principal Employer determines.

### 6.3 MEMBER CONTRIBUTIONS

#### 6.3.1 No Requirement to Contribute

A Member is not required to contribute to this Fund.

#### 6.3.2 Basic Contribution

Unless a Member makes an election in accordance with Clause 6.3.3 or the Employer otherwise directs, each Member must contribute to this Fund at the rate of 6% of Salary. These contributions are referred to as "Basic Contributions".

#### 6.3.3 Cessation of Basic Contributions

With effect from any date agreed between the Employer, the Trustee and the Member, a Member may elect to cease to make Basic Contributions to the Fund, in which case additional Employer contributions under Clause 6.2.2(b) will also cease.

#### 6.3.4 Voluntary Contribution

In addition to any Basic Contributions a Member is required to make, a Member may make additional contributions to this Fund:

- (a) with the consent of the Principal Employer; and
- (b) subject to such terms, conditions and restrictions as are imposed by the Principal Employer or the Trustee,

these contributions are referred to as "Voluntary Contributions".

### 6.4 BENEFITS

#### 6.4.1 Death or Total and Permanent Disablement

##### (a) If a Member:

- (i) dies while in Employment; or
- (ii) leaves Employment because of Total and Permanent Disablement, before reaching age 65 the Trustee must pay a lump sum equal to the sum of:
  - (iii) the Member's Total Account Balance; and
  - (iv) the Insured Amount.

##### (b) The Insured Amount means an amount calculated in accordance with the formula:

$$F \times N \times S$$

S is the Member's Salary at Date of Death or becoming Totally and Permanently Disabled.

- (c) Each Member may elect to vary the insurance cover held in respect of the Member to a rate specified in paragraph (d) below with effect from 1 January in any year or such other date as the Trustee with the approval of the Principal Employer, shall decide. Any variation shall be made in writing in a form prescribed by the Trustee and signed by the Member. Until such an election is made by the Member, the rate specified as the standard rate of insurance cover in respect of the Member in paragraph (e) below shall apply to the Member.
- (d) The optional rates of insurance cover are:
- (i) 5%
  - (ii) 10%
  - (iii) 15%;
  - (iv) 20%;
  - (v) 25%; or
  - (vi) 30%.
- (e) The standard rate of insurance cover is 15%.
- (f) If a Member, who has not received a benefit under Clause 6.4.3:
- (i) dies while in Employment; or
  - (ii) leaves Employment because of Total and Permanent Disablement,
- on or after reaching age 65 the Trustee must pay the Member's Total Account Balance.

A Member who:

- (a) leaves Employment; and
- (b) is not entitled to any other benefit under this Part 6.

SYNOPSIS: DATA FILE DATA1.GAL (Circus-Rocks/Red, 2002, 65, 18, 2014 under law des SVU 1912/92 FR 510)

$\frac{1}{2} \left( \frac{1}{2} \right) = \frac{1}{4}$

- $\dot{C}_i$

**WILLIAM M.  
MERCER**

26/10/99

## **Roche Products Retirement Fund**

### **Trust Deed**

**between**

**Roche Products Pty Ltd  
ACN 000 132 865**

**and**

**Roche Products Retirement  
Fund Pty Limited  
ACN 064 882 695**

**ROCHE PRODUCTS RETIREMENT FUND**  
**TRUST DEED**

THIS AMENDING DEED is made the twenty sixth day of October 1999

BETWEEN: ROCHE PRODUCTS PTY LTD ACN 000 132 865 (the Principal Employer)

AND: ROCHE PRODUCTS RETIREMENT FUND PTY LIMITED  
ACN 064 882 695 (the Trustee)

19-07-2009  
0014  
0014

9068245732

\$ \*\*\*\*\*70

#### RECITALS

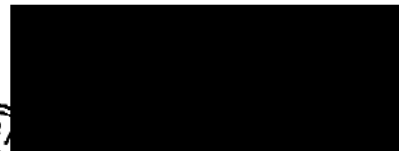
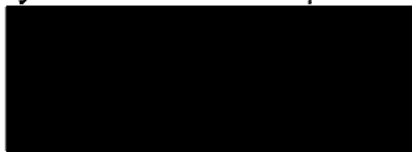
- A. By a trust deed dated 24 November 1967 (the "Trust Deed") the Principal Employer established a superannuation fund known as Roche Products Retirement Fund ("Fund") to provide retirement and other benefits for certain of its employees.
- B. By Clause 44 of the Trust Deed the Trustee, with the consent of the Principal Employer, may agree to amend the provisions of the Trust Deed subject to the conditions set out in Clause 44.
- C. The Trustee with the consent of the Principal Employer (as evidenced by the execution of this Deed of Amendment), wishes to amend the Trust Deed in the manner set out in the Operative Part below.
- D. The Trustee and the Principal Employer are satisfied these amendments comply with Clause 44.

#### OPERATIVE PART

As from 1 November 1999, the Trust Deed is amended by deleting all the provisions of the Trust Deed and inserting in their place the provisions contained in the document annexed to this deed marked "A".

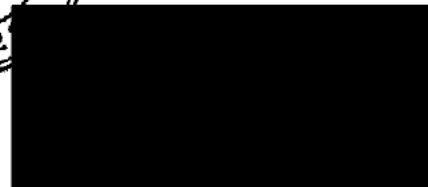
#### EXECUTED AS A DEED

THE COMMON SEAL of ROCHE  
PRODUCTS PTY LTD ACN 000 132 865  
was duly affixed to this deed in the presence of:



Director

THE COMMON SEAL of ROCHE  
PRODUCTS RETIREMENT FUND PTY  
LIMITED ACN 064 882 695 was duly affixed  
to this



Director



"A"

ROCHE PRODUCTS RETIREMENT FUND

TRUST DEED

TABLE OF CONTENTS

<b>PART 1: GENERAL PROVISIONS</b>	<b>1</b>
<b>1.1 INTERPRETATION</b>	<b>1</b>
1.1.1 Definitions	1
1.1.2 Words and Phrases	5
1.1.3 Similar Terms	6
1.1.4 Law	6
1.1.5 Part 1 of Deed Paramount	6
1.1.6 Severance	6
1.1.7 Express References	7
1.1.8 Headings and Index	7
<b>1.2 FUND</b>	<b>7</b>
1.2.1 Vesting of Fund	7
1.2.2 Divided into Parts	7
<b>1.3 COMPLIANCE WITH RELEVANT LAW</b>	<b>7</b>
1.3.1 Regulated Superannuation Fund	7
1.3.2 Discretions	7
1.3.3 Directions	7
1.3.4 Covenants	8
1.3.5 Complaints Procedure	8
1.3.6 Investment Strategy	8
1.3.7 Information to Members and Employers	8
1.3.8 Conflict with Deed	8
<b>1.4 TRUSTEE</b>	<b>8</b>
1.4.1 Nature of Trustee	8
1.4.2 Appointment of Trustee	8
1.4.3 Term of Office	9
1.4.4 Appointment of Directors	9
1.4.5 Equal Representation	9
1.4.6 Selection of Member Directors	9
1.4.7 Selection of Independent Directors	10
1.4.8 Director's Term of Office	10
1.4.9 Casual Vacancies	11
1.4.10 Quorum	11
1.4.11 Meetings	11
<b>1.5 TRUSTEE POWERS</b>	<b>12</b>
1.5.1 General Powers	12
1.5.2 Power of Investment	13
1.5.3 Power to Insure	13
1.5.4 Conflict of Interest	13
1.5.5 Discretions and Determinations	14

1.6	<b>TRUSTEE DUTIES</b>	14
1.6.1	Appointment of Auditor	14
1.6.2	Accounts and Audit	14
1.6.3	General Fund Valuation	14
1.6.4	Declared Rate of Interest	15
1.6.5	Confidentiality	15
1.7	<b>TRUSTEE INDEMNITY</b>	15
1.7.1	Exclusion from Liability	15
1.7.2	Indemnity Against Liability	16
1.8	<b>EXPENSES/REMUNERATION</b>	16
1.8.1	Fund Expenses	16
1.8.2	Trustee Remuneration	16
1.9	<b>EMPLOYERS</b>	16
1.9.1	Admission of Employers	16
1.9.2	Cessation of Participation	17
1.9.3	Transfer from One Employer to Another	18
1.10	<b>EMPLOYER POWERS</b>	18
1.10.1	Dismissal from Employment	18
1.10.2	Employer Powers/Discretions	18
1.10.3	Employer's Decision Final	19
1.10.4	Information from Employers	19
1.11	<b>NEW PRINCIPAL EMPLOYER</b>	19
1.11.1	Existing Principal Employer	19
1.11.2	No Existing Principal Employer	19
1.12	<b>MEMBERSHIP</b>	19
1.12.1	Admission of Members	19
1.12.2	Information and Evidence	20
1.12.3	Special Restrictions or Conditions	20
1.12.4	Classification of Members	21
1.12.5	Members Bound by Deed	21
1.12.6	Cessation of Membership	21
1.13	<b>CONTRIBUTIONS - GENERAL PROVISIONS</b>	22
1.13.1	Employer Contributions	22
1.13.2	Member Contributions	22
1.13.3	Contributions other than Cash	23
1.13.4	Prohibition on Contributions	23
1.13.5	Contributions Paid by Mistake	23
1.13.6	Notice to Terminate, Reduce or Suspend Employer Contributions	23
1.13.7	Effect of Notice	23
1.13.8	Revocation of Notice	23
1.14	<b>BENEFITS - GENERAL PROVISIONS</b>	24
1.14.1	Payment of Benefits	24
1.14.2	Early Release of Benefit	24
1.14.3	Interest Payments	24
1.14.4	Special Arrangements	24
1.14.5	Proof of Entitlement	25
1.14.6	Amount and Form of Benefits	25
1.14.7	Payment of Death Benefits	25

1.14.8	Beneficiary under Disability.....	26
1.14.9	Part-time or Casual Employment.....	26
1.14.10	Leave of Absence and Temporary Absence.....	26
1.14.11	Delayed Payment of Benefit.....	27
1.14.12	Transfer to this Fund.....	27
1.14.13	Transfer from this Fund.....	27
1.14.14	Effect of Transfer from this Fund.....	28
1.15	<b>REDUCTIONS IN BENEFITS .....</b>	<b>28</b>
1.15.1	Taxation.....	28
1.15.2	Assignment of Benefit.....	28
1.15.3	Insurance Offset.....	29
1.15.4	Other Scheme Offset.....	30
1.15.5	Corporations Law Restriction.....	30
1.16	<b>AMENDMENTS.....</b>	<b>30</b>
1.17	<b>PROPER LAW AND JURISDICTION .....</b>	<b>31</b>
1.17.1	Proper Law.....	31
1.17.2	Jurisdiction.....	31
1.18	<b>NOTICES.....</b>	<b>31</b>
1.18.1	Giving Notices.....	31
1.18.2	Receipt of Notice.....	31
1.19	<b>TERMINATION OF FUND.....</b>	<b>31</b>
1.19.1	Circumstances.....	31
1.19.2	Termination Date.....	32
1.19.3	Arrears of Contributions.....	32
1.19.4	Application of Assets.....	32
1.19.5	Securing of Entitlements.....	33
	<b>PART 2 : ACCOUNTS.....</b>	<b>34</b>
2.1	<b>MEMBERS' ACCOUNTS.....</b>	<b>34</b>
2.1.1	Accounts to be Maintained.....	34
2.1.2	Member Account.....	34
2.1.3	Company Account.....	34
2.1.4	Plan Transfer Account.....	35
2.1.5	Rollover Account.....	35
2.1.6	Voluntary Account.....	36
2.1.7	Surcharge Account.....	36
2.2	<b>RESERVE ACCOUNT.....</b>	<b>37</b>
2.2.1	Maintenance and Operation.....	37
2.2.2	Discretionary Application of Reserve.....	37
2.3	<b>ACCOUNTS - GENERAL PROVISIONS.....</b>	<b>37</b>
2.3.1	Accounts in Debit.....	37
2.3.2	Sub-Accounts.....	38
2.3.3	Account Expenses.....	38
2.3.4	Closing of Account.....	38

2.4	ALLOCATION OF INTEREST .....	38
2.5	SPECIAL INVESTMENT ARRANGEMENTS.....	39
2.5.1	Special Options.....	39
2.5.2	Overriding Conditions .....	39
2.5.3	Accounting for Special Portfolios .....	39
PART 3 : CONTRIBUTORY MEMBERS SECTION .....		41
3.1	APPLICATION .....	41
3.2	CONTRIBUTORY MEMBERS .....	41
3.3	EMPLOYER CONTRIBUTIONS .....	41
3.3.1	General .....	41
3.3.2	Rate of Employer Contribution .....	41
3.4	MEMBER CONTRIBUTIONS .....	41
3.4.1	Basic Contribution .....	41
3.4.2	Cessation of Basic Contributions on Review Date.....	42
3.4.3	Voluntary Contribution .....	42
3.5	BENEFITS .....	42
3.5.1	Death or Total and Permanent Disablement.....	42
3.5.2	Leaving Employment .....	43
3.5.3	Payment on or after age 65 .....	43
PART 4 : NON-CONTRIBUTORY MEMBERS SECTION .....		44
4.1	APPLICATION .....	44
4.2	NON-CONTRIBUTORY MEMBERS .....	44
4.3	EMPLOYER CONTRIBUTIONS .....	44
4.3.1	General .....	44
4.3.2	Rate of Employer Contribution .....	44
4.4	MEMBER CONTRIBUTIONS .....	44
4.4.1	No Requirement to Contribute .....	44
4.4.2	Commence to make Basic Contributions on Review Date.....	44
4.4.3	Cessation of Basic Contributions .....	45
4.4.4	Voluntary Contribution .....	45
4.5	BENEFITS .....	45
4.5.1	Death or Total and Permanent Disablement.....	45
4.5.2	Leaving Employment .....	45
4.5.3	Payment on or after age 65 .....	46

<b>PART 5 : SPECIAL EX-PLAN MEMBERS SECTION .....</b>	<b>47</b>
5.1 APPLICATION .....	47
5.2 SPECIAL EX-PLAN MEMBERS .....	47
5.3 EMPLOYER CONTRIBUTIONS .....	47
5.3.1 General .....	47
5.3.2 Rate of Employer Contribution .....	47
5.4 MEMBER CONTRIBUTIONS .....	47
5.4.1 Basic Contributions .....	47
5.4.2 Variation of Basic Contributions on Review Date .....	48
5.4.3 Cessation of Basic Contributions .....	48
5.4.4 Voluntary Contribution .....	48
5.5 BENEFITS .....	48
5.5.1 Death or Total and Permanent Disablement .....	48
5.5.2 Leaving Employment .....	49
5.5.3 Payment on or after age 65 .....	49

## PART 1: GENERAL PROVISIONS

### 1.1 INTERPRETATION

#### 1.1.1 Definitions

In this Deed:

"Account" means any Account maintained under Part 2 of this Deed.

"Account Expenses" means:

- (a) Fund Expenses excluding Group Life Insurance premiums; and
- (b) any allowance the Trustee determines is appropriate to take account of tax assessable on amounts to be credited to Accounts, whether tax is actually paid or not.

"Annual Salary" of a Member at any date means the annual rate of the Member's Salary at that date.

"Balance Date" means 31 December in each year or any other date the Trustee nominates as the Balance Date.

"Child" of a person includes:

- (a) a step-child;
- (b) an adopted child; and
- (c) any child of that person born after the death,

of the person.

"Contributory Member" means a Member who is for the time being classified as such pursuant to Clause 1.12.4 or by operation of Clause 4.4.2.

"Date of Disablement" of a disabled Member means:

- (a) the later of:
  - (i) the date the Trustee determines to be the Member's last day of active employment; and
  - (ii) the date the Trustee determines the Member's illness or injury (which was the primary cause of disablement giving rise to a benefit from this Fund) commenced or occurred; or
- (b) any other date the Trustee determines.

"Date Joined Contributory Membership" means:

- (a) in the case of a Contributory Member - the date on which the Member joined the Fund if that date is before 1 November 1999, and in any other case means the date on which the Member first became a Contributory Member; and

243  
Pl 10  
762-162

(b) in any other case - the date on which the Member joined the Fund.

"Declared Rate" means any rate of interest determined by the Trustee under clause 1.6.4.

"Deed" means this Deed as amended from time to time established for the constitution of the Roche Products Retirement Fund.

"Dependant" of a Member means:

- (a) a Spouse of the Member;
- (b) a Child of the Member; and
- (c) any person the Trustee considers is (or was at the date of death of the Member) wholly or partly dependent on the Member.

"Employee" means:

- (a)
  - (i) a person who is employed by an Employer; or
  - (ii) any other person the Principal Employer deems is an Employee for the purpose of this Fund; and
- (b) who is approved (for the time being) by the Principal Employer for membership of this Fund.

"Employer" means the Principal Employer and each other employer who participates in this Fund. In relation to a Member means the Employer by which that Member is employed.

"Employment" means actual or deemed employment of an Employee by an Employer.

"Fund" means the Roche Products Retirement Fund as constituted by this Deed and subsequent amendments, and includes all the assets held in accordance with this Deed.

"Fund Expenses" means all expenses (except tax) relating to this Fund including expenses relating to the Trustee.

"Fund Membership" of a Member means:

- (a) the most recent uninterrupted period during which the Member was:
  - (i) a Member; and
  - (ii) in Employment; and
- (b) any further period the Principal Employer determines is Fund Membership.

"Group Life Insurance" means death or disability insurance effected under this Fund in respect of a Member (on a group or individual basis).

"Member" means a person who has been admitted to membership of this Fund and who has not ceased to be a Member under clause 1.12.6.

"Member's Account" means an Account maintained in respect of the Member under this Deed.

"Minimum SG Benefit" of a Member means the minimum amount which must be provided by this Fund, on termination of Employment, (when added to benefits from other funds) to relieve the Employer from any liability for a shortfall under the SG Legislation.

"Minimum Guaranteed Benefit" means the minimum benefit which is required by the Relevant Law to be paid to, or in respect of, a Member.

"Non-Contributory Member" means a Member who is for the time being classified as such pursuant to Clause 1.12.4 or by operation of Clauses 3.4.2 or 5.4.3.

"Normal Retirement Date" means the Member's 65th birthday or any other date agreed between the Trustee, the Principal Employer and the Member.

"Other Fund" means a superannuation or other benefit arrangement (except this Fund).

"Plan" means the Roche Products Superannuation Plan.

"Principal Employer" means ROCHE PRODUCTS PTY LTD ACN 000 132 865 and includes any person who subsequently assumes the office of Principal Employer under this Deed.

"Relevant Law" means the requirements set out in:

- (a) the Superannuation Industry (Supervision) Act 1993;
- (b) the Income Tax Assessment Act 1936;
- (c) the Income Tax Assessment Act 1997;
- (d) the Superannuation (Excluded Funds) Taxation Act 1987;
- (e) the Superannuation (Resolution of Complaints) Act 1993;
- (f) the Superannuation Contributions Tax (Assessment and Collection) Act 1997;
- (g) any regulations made under any of those Acts; and
- (h) any other law which the Trustee and the Principal Employer agree is a Relevant Law for the purposes of this Deed.

"Required Payment Date" means the date at which a Member's benefit must be paid (or commence to be paid) under the Relevant Law.

"Review Date" means:

- (a) 1 January or any other date agreed between the Trustee and the Principal Employer; and
- (b) for a Member who was not a Member on 1 January, the first Review Date is the date of admission to membership.

"Salary" of a Member means the amount advised by the Employer to the Trustee as being the Member's salary for superannuation purposes.

"Section" means the Contributory Members Section contained in Part 3, the Non-Contributory Members Section contained in Part 4, or the Special Contributory Closed Category Members Section contained in Part 5, as amended from time to time.

"SG Legislation" means the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992.

"Special Ex-Plan Member" means a Member who was a member of both the Plan and the Fund on 31 October 1999 and who has not at any time ceased to be a Special Ex-Plan Member by operation of Clause 5.4.3 or otherwise.

"Spouse" of a Member means:

- (a) the Member's husband, wife, widow or widower; and
- (b) a person who:
  - (i) is not legally married to the Member; but
  - (ii) in the Trustee's opinion, lives (or, immediately before the Member's death, lived) on a genuine domestic basis as the husband or wife of the Member.

"Superannuation Authority" means the Insurance and Superannuation Commissioner or any other governmental authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

"Tax" includes all income tax (including any tax on the disposal of assets), withholding tax, stamp, financial institutions and other duties, bank account debits 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.

"Temporary Total Disablement" of a Member:

- (a) if there is a relevant policy of insurance in force - means disablement which the insurer determines qualifies as temporary total disablement under that policy; or
- (b) if there is no relevant policy of insurance in force - means disablement (not amounting to Total and Permanent Disablement):
  - (i) resulting from an illness or injury which commences or occurs before Normal Retirement Date; and
  - (ii) as a result of which the Member has been continuously absent from active employment for three months (or any lesser period agreed between the Principal Employer and the Trustee); and
  - (iii) the Trustee determines (after considering any medical or other evidence the Trustee requires) the Member is unable to resume work in the Member's former occupation.

"Termination Date" means the date referred to in clause 1.19.2.

"Total Account Balance" of a Member at any time means the total amount standing to the credit of that Member's Accounts at that time.

"Total and Permanent Disablement" of a Member:

- (a) if there is a relevant policy of insurance in force - means disablement which the insurer determines qualifies as total and permanent disablement under that policy; or
- (b) if there is no relevant policy of insurance in force - means disablement due to an illness or injury as a result of which:
  - (i) the Member has been continuously absent from active employment for six months (or any lesser period agreed between the Principal Employer and the Trustee); and
  - (ii) the Trustee determines (after considering any medical or other evidence the Trustee requires) the Member is sufficiently incapacitated to be unlikely ever to engage in any gainful employment for which the Member is reasonably qualified by education, training or experience.

"Trustee" means the trustee for the time being of this Fund.

#### 1.1.2 Words and Phrases

In this Deed:

- (a) the term:
  - (i) "amendment" includes an addition, variation, deletion and substitution;
  - (ii) "beneficiary" includes a contingent beneficiary, a potential beneficiary, a Member and a pensioner;
  - (iii) "for example" is only illustrative and means including without limitation;
  - (iv) "including" means including without limitation;
  - (v) "may" confers absolute discretion on the person entitled to exercise a right or power conferred but does not infer any obligation to exercise that right or power;
  - (vi) "person" includes:
    - (A) a body corporate and any other person recognised at law;
    - (B) a partnership and any other group or association;
    - (C) a governmental authority,but the expression "natural person" must be given its normal meaning; and
  - (vii) "tax" includes income tax, capital gains tax and other taxes and any duty, charge, levy and other government impost;

- ### 1.1.3 Similar Terms

### 1.1.4 Law

- ### 1.1.5 Part 1 of Deed Paramount

(a) Part 1 of this Deed:

- ### 1.1.6 Severance

(a) invalid in whole or in part; or

- is severed or limited or read down to the extent of the invalidity, but the remainder of the provision continues in full force and effect.

#### **1.1.7 Express References**

- (a) An express reference to one matter (including a clause or law) must not be taken as excluding other matters (including clauses or laws).
- (b) An express reference in this Deed to a clause must not be taken to infer that that clause does not have relevance to other clauses which do not contain specific references.
- (c) References to this Deed or any clause of this Deed includes the Deed or clause as amended or replaced.

#### **1.1.8 Headings and Index**

The index and headings in this Deed are included for convenience and do not affect the interpretation of this Deed.

### **1.2 FUND**

#### **1.2.1 Vesting of Fund**

The assets of this Fund are vested in the Trustee.

#### **1.2.2 Divided into Parts**

The Trustee may:

- (a) determine to divide this Fund into separate sub-funds; and
- (b) may allocate particular assets to each sub-fund for one purpose but not another. (For example, the Trustee may regard assets as allocated to particular sub-funds for the purpose of determining interest to be credited to any Members' accounts or benefits, but not for the purpose of distributing assets on termination of this Fund.)

### **1.3 COMPLIANCE WITH RELEVANT LAW**

#### **1.3.1 Regulated Superannuation Fund**

- (a) This Fund is and must remain a regulated superannuation fund as defined in the Relevant Law.
- (b) The Trustee and each Employer must comply with each requirement of the Relevant Law which applies to a regulated superannuation fund unless the Superannuation Authority does not require it to be complied with.

#### **1.3.2 Discretions**

The Trustee's consent must be obtained for the exercise of a discretion by another person if the Relevant Law requires.

#### **1.3.3 Directions**

If:

- (a) this Deed provides for the Trustee to be subject to a direction by any person; and

(b) that direction would contravene the Relevant Law,

the right to give that direction must be interpreted as a right to exercise a discretion by the person concerned with the consent of the Trustee.

#### **1.3.4 Covenants**

The covenants required by Relevant Law to be included in the Deed are included by this clause as covenants by the Trustee and by each director of the Trustee.

#### **1.3.5 Complaints Procedure**

- (a) The Trustee must establish and maintain a system for dealing with complaints and inquiries by Members and other persons in accordance with the Relevant Law.
- (b) To the extent required by the Relevant Law, the Trustee and other persons must comply with each decision of a court or tribunal constituted under the Relevant Law.

#### **1.3.6 Investment Strategy**

The Trustee must have and implement a strategy for the investment of the assets of this Fund which complies with the requirements of the Relevant Law.

#### **1.3.7 Information to Members and Employers**

The Trustee must comply with the Relevant Law in relation to the provision of information to Members, Employers and other persons.

#### **1.3.8 Conflict with Deed**

To the extent of any inconsistency between the requirements included by this clause 1.3 and:

- (a) any other provision of this Deed; or
- (b) any agreement made under this Deed, including:
  - (i) an agreement made under clause 1.9.1; or
  - (ii) an agreement made under clause 1.14.4,

the requirements included by this clause 1.3 prevail.

### **1.4 TRUSTEE**

#### **1.4.1 Nature of Trustee**

The Trustee of this Fund must be a constitutional corporation unless the sole or primary purpose of this Fund is the provision of old-age pensions.

#### **1.4.2 Appointment of Trustee**

- (a) The Principal Employer has power to appoint a new Trustee.
- (b) The new Trustee;

- (i) must be appointed in writing;
- (ii) may be appointed for a fixed term.
- (c) The acts of the Trustee are valid even if there is a defect in its appointment.

#### 1.4.3 Term of Office

The Trustee must hold office until the earliest of the following dates:

- (a) it is removed by the Principal Employer;
- (b) its term of office expires;
- (c) it retires from that office by written notice to the Principal Employer;
- (d) the appointment of a receiver, receiver and manager or liquidator in respect of it or a court approves a scheme of arrangement providing for its dissolution;
- (e) it is disqualified from that office by law; and
- (f) it becomes a disqualified person as defined in the Relevant Law.

Then the Principal Employer must appoint a replacement Trustee, under clause 1.4.2.

#### 1.4.4 Appointment of Directors

The Principal Employer must appoint the Directors selected under this clause 1.4.

#### 1.4.5 Equal Representation

If the Relevant Law requires the Trustee to have an equal number of member representatives and employer representatives, the board of the Trustee:

- (a) must consist of an equal number of:
  - (i) directors selected from amongst the Members in Employment under clause 1.4.6 ("Member Directors"); and
  - (ii) directors selected by the Principal Employer ("Employer Directors"); and
- (b) may include one additional director (an "Independent Director") selected under clause 1.4.7.

#### 1.4.6 Selection of Member Directors

- (a) A person is eligible to hold the office of Member Director if that person is:
  - (i) a Member;
  - (ii) in Employment; and
  - (iii) at least 18 years of age.
- (b) The persons entitled to select Member Directors are Members who are in Employment.

- (c) The Trustee must determine regulations and procedures which apply to the selection and removal of Member Directors. These regulations and procedures may include:
  - (i) the date on which a Member Director assumes office;
  - (ii) the term of office of a Member Director;
  - (iii) (subject to paragraphs (a) and (b)) eligibility, nominations, electoral groupings and voting; and
  - (iv) the manner in which casual vacancies in the office of Member Director are to be filled.

The Trustee may vary the regulations and procedures.

- (d) Failure to notify any Member of anything relating to the selection of a Member Director has no effect on the selection.

#### 1.4.7 Selection of Independent Directors

- (a) A person is eligible to hold the office of Independent Director if that person is not:
  - (i) a Member;
  - (ii) an Employer;
  - (iii) an officer or employee of an Employer; or
  - (iv) an official of a trade union or any similar organisation which represents Employees or Employers.
- (b) If an Independent Director is to be appointed, the Trustee must determine regulations and procedures which apply to the selection and removal of Independent Directors. These regulations and procedures may include:
  - (i) the date on which an Independent Director assumes office; and
  - (ii) the term of office of an Independent Director.

The Trustee may vary the regulations and procedures.

#### 1.4.8 Director's Term of Office

A director holds office until the earliest of the following dates:

- (a) that director becomes a disqualified person as defined in the Relevant Law;
- (b) the Principal Employer and the Trustee receive that director's written notice of resignation;
- (c) expiry of that director's term of office;
- (d) that director is disqualified from office by operation of law;
- (e) that director's death;

- (f) in the case of a Member Director or Independent Director:
  - (i) that director ceases to be eligible to hold that office; or
  - (ii) that director is removed from office under the regulations and procedures adopted under clause 1.4.6(c) or 1.4.7(b) as appropriate;
- (g) in the case of an Employer Director, that director is removed from that office by the Principal Employer.

A director who ceases to hold office under this clause and who is otherwise eligible, is entitled to be reselected or reappointed as a director.

#### 1.4.9 Casual Vacancies

- (a) The Trustee has power to act even when there is not a full complement of directors.
- (b) A casual vacancy in the number of Employer Directors and Member Directors must be filled in accordance with:
  - (i) this Deed; and
  - (ii) in the case of a Member Director, any regulations and procedures adopted under clause 1.4.6(c).
- (c) A person appointed to fill a casual vacancy holds office:
  - (i) for the remainder of the term of office of the director who vacated that office; or
  - (ii) any other period determined by the Directors.

#### 1.4.10 Quorum

A quorum of directors is 2/3rds of the total number of directors in office for the time being.

#### 1.4.11 Meetings

- (a) The directors may meet and regulate or adjourn their meetings as they see fit.
- (b) A meeting of directors is competent to exercise all the powers of the Trustee if there is a quorum present at that meeting.
- (c) A written resolution, signed by a quorum of directors, has the same validity as a resolution passed at a meeting of the directors. A number of documents containing identical terms each signed by one or more directors will be considered to constitute a written resolution.
- (d) Attendance at a meeting of directors may be by way of conference telephone, video conference or the like, in which all participants can hear each other.
- (e) A meeting of directors may be convened by a director or the Secretary by giving the directors seven days' written notice. However, if a quorum of directors agree, a meeting may be convened on shorter notice or with no notice.

- (f) The directors may appoint a chairman of directors.
  - (i) A director appointed as chairman will cease to be chairman on the earliest of the following dates:
    - (A) that director ceases to be a director;
    - (B) that director gives written notice of resignation as chairman to the other directors;
    - (C) that director is removed as chairman by resolution of the other directors.
  - (ii) If:
    - (A) there is no chairman; or
    - (B) the chairman is not present at a meeting of directors within 15 minutes of the time appointed for the meeting; or
    - (C) the chairman is unwilling to act as chairman,

the remaining directors may appoint a director to act as chairman for that meeting.
- (g) Each director has one vote but an Independent Director does not have a casting vote.
- (h) The Trustee must keep written minutes of meetings of the directors.
- (i) The Trustee may establish regulations or procedures for the appointment of alternate directors only with the consent of the Principal Employer.

## 1.5 TRUSTEE POWERS

### 1.5.1 General Powers

The Trustee may do all acts and things it considers necessary, desirable or expedient for the administration, maintenance and preservation of this Fund, including:

- (a) appoint or remove custodians, managers, agents, delegates, employees and any other persons it considers appropriate and pay fees or other remuneration to those persons out of this Fund;
- (b) delegate any or all powers, duties or discretions to any person and to vary the terms of any delegation;
- (c) seek and act on the advice of a person the Trustee considers is capable of giving that advice without being liable in respect of anything done or omitted by reason of that advice;
- (d) institute, conduct, defend, settle or abandon legal proceedings;
- (e) refer claims to arbitration, mediation or conciliation;
- (f) settle any claim;

- (g) operate bank accounts or accounts with other institutions;
- (h) enter into contracts;
- (i) give undertakings, guarantees, discharges, releases and indemnities;
- (j) provide for or transfer any tax; and
- (k) borrow money and secure the borrowing in any manner.

These powers are in addition to all other powers given to trustees by law.

#### 1.5.2 Power of Investment

The Trustee may:

- (a) invest all money, which is not immediately required, in any manner it could invest if acting personally and not as a trustee;
  - (b) manage, develop, improve, change or otherwise exploit any investment of this Fund;
  - (c) participate in any financial arrangement (usually called a synthetic or derivative investment) for the purpose of risk management or hedging;
  - (d) grant or exercise any right or power associated with any particular investment, for example, a right to vote as a result of shareholding;
  - (e) pool this Fund's assets with other persons' assets for investment purposes;
  - (f) pay all investment expenses out of this Fund including the cost of investigation and negotiation for a prospective investment which does not become part of this Fund; and
  - (g) appoint a custodian or nominee to hold this Fund's investments,
- as if it were dealing with its own property.

#### 1.5.3 Power to Insure

- (a) The Trustee may purchase and renew insurance of any kind, including:
  - (i) insurance in respect of Members on an individual or a group basis;
  - (ii) trustee liability insurance; and
  - (iii) insurance on the property or other assets of this Fund.
- (b) The Trustee may pay all insurance premiums out of this Fund.

#### 1.5.4 Conflict of Interest

- (a) The Trustee may exercise all powers and discretions even if the Trustee is an Employer, Employee, Member or other beneficiary or has an interest in the matter concerned.
- (b) Each director of the Trustee may:

- (i) exercise all powers and discretions;
  - (ii) be counted in a quorum; and
  - (iii) vote at any meeting of the directors,  
even if that director:
  - (iv) is an Employer, Employee, Member or other beneficiary; or
  - (v) has an interest in the matter concerned,
- but must disclose that director's interest to the other directors.

#### 1.5.5 Discretions and Determinations

In the exercise of its powers and discretions under this Deed, the Trustee:

- (a) may rely on any information provided by any person including an Employer, Employee and a Member; and
- (b) has absolute discretion:
  - (i) to exercise that power or discretion;
  - (ii) not to exercise that power or discretion; and
  - (iii) to partly exercise that power or discretion,

and is not obliged to explain its conduct.

#### 1.6 TRUSTEE DUTIES

##### 1.6.1 Appointment of Auditor

The Trustee must appoint an auditor to this Fund but may change the auditor from time to time.

##### 1.6.2 Accounts and Audit

The Trustee must ensure that:

- (a) proper records and accounts are kept in respect of this Fund; and
- (b) the records and accounts of this Fund are audited by the auditor each year; and
- (c) the Principal Employer receives a copy of the audited accounts each year.

##### 1.6.3 General Fund Valuation

The Trustee:

- (a) must, at least annually:
  - (i) value this Fund; and

- (ii) determine the return on the investment of this Fund's assets since the previous valuation (including income on the assets, profits, losses, capital appreciation or depreciation),

after obtaining suitable professional advice; and

- (b) may make allowance for:

- (i) any tax on investment earnings; and

- (ii) Fund Expenses,

which the Trustee determines is appropriate.

#### **1.6.4 Declared Rate of Interest**

- (a) The Trustee must declare:

- (i) a rate of interest (at least annually) having regard to the investment return determined under clause 1.6.3; or

- (ii) (if Special Portfolios have been established under clause 2.5) a rate of interest (at least annually) in respect of:

- (A) each Special Portfolio; and

- (B) assets which are not represented by a Special Portfolio,

but may make the allowances mentioned in clause 1.6.3(b).

- (b) A declared rate of interest may be positive or negative.

- (c) The Trustee may declare an interim rate of interest in respect of any period and may change that rate prospectively or retrospectively.

- (d) The Trustee may declare one rate of interest for the purpose of one or more provisions of this Deed and another for other provisions.

#### **1.6.5 Confidentiality**

The Trustee must treat all information received in respect of Members and Employers, in connection with this Fund, as confidential except to the extent that disclosure of that information:

- (a) is required by law; or

- (b) reasonably necessary in the administration of this Fund.

### **1.7 TRUSTEE INDEMNITY**

#### **1.7.1 Exclusion from Liability**

Neither:

- (a) the Trustee; nor

- (b) a director or employee of the Trustee; nor
  - (c) a director or employee of an Employer,
- is liable in connection with this Fund except to the extent that:
- (d) that person fails to act honestly in relation to this Fund; or
  - (e) that person intentionally or recklessly fails to exercise the degree of care and diligence required; or
  - (f) exemption from liability is prohibited by the Relevant Law.

#### **1.7.2 Indemnity Against Liability**

To the extent that clause 1.7.1 is not sufficient to protect any of the persons mentioned from liability, then that person is indemnified out of the assets of this Fund in respect of any liability in connection with this Fund, except to the extent that:

- (a) that person fails to act honestly in relation to this Fund; or
- (b) that person intentionally or recklessly fails to exercise the degree of care and diligence required; or
- (c) indemnity from this Fund is prohibited by the Relevant Law.

### **1.8 EXPENSES/REMUNERATION**

#### **1.8.1 Fund Expenses**

All expenses in connection with this Fund and the Trustee must be paid from this Fund, except to the extent that they are paid directly by an Employer.

#### **1.8.2 Trustee Remuneration**

- (a) The Trustee may be remunerated for acting as trustee to the extent agreed between the Trustee and the Principal Employer.
- (b) Any agreed Trustee remuneration must be:
  - (i) paid from this Fund to the extent that it is not paid directly by any Employer; and
  - (ii) divided equally between the directors of the Trustee, unless the shareholders or members of the Trustee agree otherwise.

### **1.9 EMPLOYERS**

#### **1.9.1 Admission of Employers**

- (a) The Principal Employer may permit any other employer to participate in this Fund:
  - (i) on the basis outlined in this Deed; or

- (ii) on a basis agreed between the Principal Employer and the employer concerned. Any agreed basis takes precedence over the basis outlined in this Deed.
- (b) The Principal Employer and an Employer may change the basis on which that Employer participates in this Fund. Any such change must be in accordance with clause 1.16 as if it were an amendment of this Deed.
- (c) The Principal Employer must notify the Trustee when it admits another employer to participate in this Fund and the terms upon which that Employer is to participate.

#### 1.9.2 Cessation of Participation

- (a) An Employer:
  - (i) automatically ceases to participate in this Fund if:
    - (A) none of the Members are Employees of that Employer; or
    - (B) clause 1.19 does not apply but that Employer ceases to carry on business for any reason or becomes bankrupt, unless:
      - (I) another person has succeeded to the business of that Employer;
      - (II) the Trustee admits that other person to participate in this Fund instead of the Employer; and
      - (III) the Trustee has obtained the consent of the Principal Employer to admit the replacement employer unless the Employer concerned is the Principal Employer; or
  - (ii) may elect to cease participation in this Fund by giving written notice to the Trustee. The Principal Employer may make the election on behalf of the Employer and every person will be bound by that election, including the Employer concerned.
- (b) Where an Employer ceases to participate in this Fund, the Trustee:
  - (i) must set aside:
    - (A) the Member's Total Account Balance in respect of each Member then employed by the Employer concerned ("Affected Member"); or
    - (B) any greater amount agreed between the Trustee and the Principal Employer.
  - (ii) (unless the Principal Employer and the Trustee agree otherwise) must transfer:
    - (A) the amounts set aside under paragraph (i); plus
    - (B) interest, at the Declared Rate, on those amounts between cessation of participation and the date of transfer; minus

- (C) any benefit paid to Affected Members (from the amount set aside under paragraph (i)) since cessation of participation and any amount the Trustee determines to retain in this Fund under paragraph (iii),

to:

- (D) an Other Fund in which the Employer concerned participates (or intends to participate) in respect of the Member concerned ("Employer Sponsored Fund"); or

- (E) (if there is no Employer Sponsored Fund) an Other Fund which the Trustee selects; and

- (iii) (where any benefit has been paid to an Affected Member after the date of cessation of participation) may deal with the excess of:

- (A) the total amount mentioned in paragraphs (ii)(A) and (ii)(B); over

- (B) the total amounts paid to Affected Members since cessation of participation,

as the Trustee considers appropriate in the circumstances.

### 1.9.3 Transfer from One Employer to Another

Unless the Principal Employer and the Trustee agree otherwise, a Member:

- (a) does not cease to be a Member or an Employee; or
- (b) become entitled to the payment of a benefit,

when that Member ceases Employment with one Employer but becomes an Employee of another Employer.

### 1.10 EMPLOYER POWERS

#### 1.10.1 Dismissal from Employment

Nothing in this Deed (including the benefit provisions):

- (a) affects any power an Employer may have to dismiss or pay an Employee; or
- (b) may be used in a claim for damages on dismissal or otherwise.

#### 1.10.2 Employer Powers/Discretions

In the exercise of their powers and discretions under this Deed, the Principal Employer and any other Employer:

- (a) has absolute discretion:
  - (i) to exercise that power or discretion;
  - (ii) not to exercise that power or discretion;

- (iii) to partly exercise that power or discretion;
- (b) may exercise that power or discretion in its own interest;
- (c) is not under any fiduciary or other obligation in the exercise or non-exercise of the power or discretion; and
- (d) is not obliged to explain its conduct.

#### **1.10.3 Employer's Decision Final**

The decision of the Principal Employer is final and binding on all persons on any matter relating to Employment including:

- (a) the date on which a person commenced or left Employment;
- (b) whether or not an Employee is actively employed;
- (c) an Employee's salary or wages; and
- (d) the terms and conditions of an Employee's Employment generally.

#### **1.10.4 Information from Employers**

The Employers must give the Trustee all information in its power or possession which is reasonably required by the Trustee in relation to this Fund.

#### **1.11 NEW PRINCIPAL EMPLOYER**

##### **1.11.1 Existing Principal Employer**

The Principal Employer may appoint a person as a replacement Principal Employer with that person's consent.

##### **1.11.2 No Existing Principal Employer**

If the Employer who ceases to participate in this Fund under clause 1.9.2 is the Principal Employer, the Trustee must try to arrange for another Employer to accept the position of Principal Employer. This Fund must be terminated under clause 1.19 if no Employer is able or willing to act as Principal Employer.

#### **1.12 MEMBERSHIP**

##### **1.12.1 Admission of Members**

- (a) An Employee becomes a Member of this Fund:
  - (i) from the date the Trustee accepts the Employee's application for membership; or
  - (ii) from the date the Employee is deemed to be admitted as a Member under any automatic admission arrangement determined by the Principal Employer,

or any other (earlier or later) date agreed between the Principal Employer and the Trustee but an Employee who does not become a Member when first eligible, may become a Member at a later date only:

- (iii) with the consent of the Principal Employer; and
  - (iv) on the terms and conditions agreed between the Principal Employer and the Trustee.
- (b) An Employee who is admitted to membership (under paragraph (a)(ii)) is not required to contribute to this Fund except to the extent that that person:
- (i) consents to contribute; or
  - (ii) the Relevant Law requires that person to contribute.
- (c) Members who leave but rejoin Employment:
- (i) must be treated as if they were never Members before; but
  - (ii) will remain entitled to any benefit retained in this Fund in respect of the previous period of membership, and
- rejoining Employment will have no effect on the Member's earlier benefit.

#### 1.12.2 Information and Evidence

Each Employee and each Member must:

- (a) give such information and evidence; and
- (b) sign such documents; and
- (c) undergo such medical examinations and tests; and
- (d) satisfy such other requirements,

as and when the Trustee requires.

#### 1.12.3 Special Restrictions or Conditions

The Trustee may:

- (a) admit an Employee as a Member on special terms, conditions, and restrictions on:
  - (i) benefits provided by this Fund; and
  - (ii) contributions to this Fund,with the consent of the Principal Employer; or
- (b) apply special terms, conditions, and restrictions on:
  - (i) benefits provided by this Fund; and

- (ii) contributions to this Fund,  
in respect of any Member:
- (iii) who fails to comply with any of the requirements imposed under clause 1.12.2;  
or
- (iv) whose medical examination or test results are not satisfactory in the Trustee's  
opinion; or
- (v) whose statement or evidence contains a mis-statement, mistake, inaccuracy or  
omission; or
- (c) (with the consent of the Principal Employer) remove any special terms, conditions and  
restrictions previously imposed.

#### 1.12.4 Classification of Members

- (a) Members must be divided into categories if the Principal Employer requires. Then the  
Principal Employer:
  - (i) must:
    - (A) determine the number of categories;
    - (B) determine the conditions for entry to and exit from each category;
    - (C) classify Members into the relevant categories; and
    - (D) (with the consent of the Trustee) determine the benefits and  
contributions for any category whose benefits are not set out in a later  
Part of this Deed; and
  - (ii) may reclassify Members from time to time.
- (b) The decision of the Principal Employer is final and binding on all persons as to:
  - (i) whether; and
  - (ii) for how long,  
a Member is classified in a particular category.

#### 1.12.5 Members Bound by Deed

Every beneficiary under this Fund is bound by this Deed.

#### 1.12.6 Cessation of Membership

A person ceases to be a Member when all benefits which are or may be payable in respect of  
the Member have been paid, transferred, or otherwise applied (including in the purchase of an  
annuity or pension from an institution).

## 1.13 CONTRIBUTIONS - GENERAL PROVISIONS

### 1.13.1 Employer Contributions

Each Employer:

- (a) must contribute the amount set out in a subsequent Part of this Deed unless contributions are varied under another clause (for example clause 1.13.6 or clause 1.15.4);
- (b) may direct how any extra employer contributions (which are not made to satisfy a requirement under another clause, for example clause 1.14.4) are to be applied; and
- (c) must remit its contributions to this Fund:
  - (i) in the manner; and
  - (ii) at the times,

agreed between the Trustee and the Principal Employer.

### 1.13.2 Member Contributions

- (a) Any amount which Members are obliged or permitted to contribute:
  - (i) is set out in a later Part of this Deed;
  - (ii) must be deducted by the Employer from the Member's pay, except where:
    - (A) the law does not allow; or
    - (B) the Employer does not agree to make the deduction,then the Member must pay the contributions directly to this Fund;
  - (iii) must be paid to this Fund in the manner and at the times agreed between the Trustee and the Principal Employer; and
  - (iv) must cease on the earlier of:
    - (A) the date the Member ceases Employment; and
    - (B) Normal Retirement Date,unless otherwise agreed between the Trustee, the Principal Employer and the Member.
- (b) An Employer may:
  - (i) release a Member from making contributions to this Fund; and
  - (ii) attach conditions to that release.

#### **1.13.3 Contributions other than Cash**

The Trustee may accept contributions other than in cash including, for example, superannuation guarantee shortfall vouchers.

#### **1.13.4 Prohibition on Contributions**

The Trustee:

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

#### **1.13.5 Contributions Paid by Mistake**

The Trustee must repay contributions which:

- (a) it determines were paid by mistake unless:
  - (i) the Relevant Law prevents that repayment; or
  - (ii) the person who mistakenly paid the contributions and the Trustee agree otherwise; or
- (b) the Trustee should have refused to accept under clause 1.13.4(b).

#### **1.13.6 Notice to Terminate, Reduce or Suspend Employer Contributions**

An Employer may terminate, reduce or suspend its obligation (or agreement) to contribute in respect of some or all Members by giving notice to the Trustee. The termination, reduction or suspension takes effect from the date of receipt of the notice or any later date specified in the notice.

The Principal Employer may give a notice in respect of any Employer which is binding on every person including the Employer in respect of whom it is given.

#### **1.13.7 Effect of Notice**

The Trustee must adjust any benefits (in respect of the Members concerned), which do not consist solely of Member Account balances, to take account of:

- (a) termination, reduction or suspension of an Employer's obligation (or agreement) to contribute; or
- (b) failure by an Employer to contribute as required or agreed.

#### **1.13.8 Revocation of Notice**

A person who gives a notice under clause 1.13.6 may revoke it by giving notice to the Trustee. If a notice is revoked the Trustee may adjust benefits and contributions in respect of the Members concerned in the manner the Trustee considers equitable.

## **1.14 BENEFITS - GENERAL PROVISIONS**

### **1.14.1 Payment of Benefits**

The Trustee must comply with the Relevant Law in relation to benefits, including:

- (a) the preservation of benefits;
- (b) the transfer of unclaimed benefits; and
- (c) non-payment of any benefit during a period of technical insolvency (as defined in the Relevant Law) without the approval of a qualified actuary.

### **1.14.2 Early Release of Benefit**

- (a) The Trustee may pay all or part of the amount to which a Member would have been entitled under this Fund if that Member left Employment on the date of payment even though the Member remains in Employment if:
  - (i) the Relevant Law permits; and
  - (ii) payment does not have the effect of increasing an Employer's financial commitment to this Fund; and
  - (iii) the Principal Employer agrees.
- (b) The Trustee must adjust any benefit payable from this Fund to take account of any earlier payment under this clause.

### **1.14.3 Interest Payments**

The Trustee may add interest to a benefit payable in respect of the period between:

- (a) the date the benefit became payable; and
- (b) the date of payment of the benefit,

but only to the extent that the benefit does not already include interest for the period.

### **1.14.4 Special Arrangements**

- (a) The Principal Employer and either:
  - (i) a Member; or
  - (ii) an Employee who has not yet become a Member of this Fund,may vary by agreement any or all:
  - (iii) the benefits otherwise payable as a result of that person's membership of this Fund;
  - (iv) the contributions otherwise payable as a result of that person's membership of this Fund; and

- (v) the other terms and conditions of membership.
- (b) The Trustee must comply with any agreement made under paragraph (a) except to the extent that an Employer does not pay any additional contributions which the Trustee determines are required.

#### 1.14.5 Proof of Entitlement

The Trustee may delay payment of a benefit from this Fund until any proof of entitlement it requires is supplied.

#### 1.14.6 Amount and Form of Benefits

- (a) The later Parts of this Deed contain details of:
  - (i) the amount of the benefits under this Fund (but those amounts may not apply if, for example, there is a special arrangement in force or the benefit is reduced under clause 1.15); and
  - (ii) the usual form of benefits, that is whether benefits are paid in lump sum or in pension form.
- (b) Instead of taking a benefit in its usual form, beneficiary may elect that all or part of that benefit be replaced with another benefit payable (either or both):
  - (i) in a different form; or
  - (ii) in different circumstances,with the consent of the Principal Employer and the Trustee, but:
  - (iii) the beneficiary must make the election at the time and within the period determined by the Trustee; and
  - (iv) the terms and conditions agreed between the Trustee and the Principal Employer apply.
- (c) Any election under paragraph (b) to which effect is given is final and binding on all persons, including any person with a contingent entitlement.
- (d) Instead of paying a pension or annuity from this Fund, the Trustee may purchase a pension or annuity from a suitable institution, and every person will be bound by the Trustee's decision and the terms on which the pension or annuity is arranged.
- (e) Any pension or annuity the Trustee considers is a trivial amount may be paid in lump sum form.

#### 1.14.7 Payment of Death Benefits

Any benefit which is:

- (a) payable on the death of a Member; and
- (b) not required under this Deed to be paid to a specific person or representative,

must be paid to:

- (c) one or more of the Member's Dependents; or
- (d) the Member's legal personal representative,

whichever (or both) the Trustee determines, and in such proportions as the Trustee determines.

But no Dependant or legal personal representative of the Member has been located the benefit may be paid to any one or more of the Member's relatives the Trustee determines.

#### 1.14.8 Beneficiary under Disability

- (a) The Trustee may apply the whole benefit (or any part that the Trustee determines) of any beneficiary:
  - (i) who is under a legal disability (for example, if the beneficiary is a minor child); or
  - (ii) whom the Trustee considers is unable to manage their affairs; or
  - (iii) whom the Trustee considers is unable to deal with the benefit in a suitable way,in any of the following ways:
  - (iv) towards the maintenance or education of the beneficiary; or
  - (v) directly for the benefit of the beneficiary; or
  - (vi) to a guardian, trustee, spouse, parent or child of the beneficiary or some other person who the Trustee considers has the care and custody of the beneficiary for the time being.
- (b) Any payment or application under paragraph (a) is a complete discharge to the Trustee for the amount paid or applied and no person has a right of action against the Trustee for that amount on any grounds.

#### 1.14.9 Part-time or Casual Employment

- (a) If the Principal Employer determines, a Member who is in part-time Employment must be included in a special classification of membership. Special benefits, contributions and other terms and conditions agreed between the Trustee and the Principal Employer apply in respect of any Member included in that special classification.
- (b) Unless otherwise agreed between the Trustee and the Principal Employer, the only benefit to be provided from this Fund in respect of a Member who is in casual Employment is that Member's Minimum SG Benefit to which clause 1.14.11 applies.

#### 1.14.10 Leave of Absence and Temporary Absence

A Member's period of absence from active Employment must not be included for the purpose of:

- (a) calculating benefits; or

- (b) calculating contributions payable to this Fund by or in respect of the Member, unless the Member, the Employer and the Trustee agree otherwise.

#### 1.14.11 Delayed Payment of Benefit

The Trustee:

- (a) must withhold any benefit payable to a Member whose Employment is casual until the earliest of the following dates:
- (i) 3 months after the Member ceased Employment (or any longer period the Principal Employer and the Trustee agree);
  - (ii) the Required Payment Date; and
  - (iii) the Trustee is satisfied that the Member will not be employed by an Employer within 3 months (or longer period agreed under paragraph (i)); and
- (b) may withhold any benefit payable to any other Member if the Trustee and Employer agree that the Member's cessation of Employment is temporary,

and the period for which the benefit is withheld must be treated as leave of absence.

#### 1.14.12 Transfer to this Fund

- (a) The Trustee may accept money or other assets from an Other Fund in respect of a Member or prospective Member, with the consent of the Principal Employer.
- (b) A prospective Member (in respect of whom money or other assets are accepted under paragraph (a)) must become a Member in accordance with clause 1.12.
- (c) The Principal Employer and the Trustee must agree on the rights and obligations of Members affected by this clause 1.14.12 to the extent that they are not specifically set out in this Deed.

#### 1.14.13 Transfer from this Fund

- (a) If a Member, who remains in Employment, becomes or is eligible to become a member of an Other Fund, the Trustee may transfer:
- (i) all or part of the amount representing the benefit to which that Member would have been entitled on voluntarily cessation of Employment on the day of the transfer; or
  - (ii) (on any conditions set by the Principal Employer) any greater amount agreed between the Trustee and the Principal Employer,
- to that other Fund,
- (iii) with the consent of the Principal Employer; but
  - (iv) without the consent of that Member if permitted under the Relevant Law.

- (b) In respect of any beneficiary except a Member who remains in Employment, the Trustee may transfer:
  - (i) all or part of the amount which the Trustee considers represents the benefit to which that beneficiary is then entitled; or
  - (ii) (on any conditions set by the Principal Employer) any greater amount agreed between the Principal Employer and the Trustee,

to an Other Fund without the Principal Employer's consent, and without the consent of the beneficiary concerned if permitted under the Relevant Law.

#### 1.14.14 Effect of Transfer from this Fund

- (a) No person (including any contingent beneficiary) has any right against the Trustee or an Employer in respect of any money or assets transferred to an Other Fund (unless the Principal Employer and the Trustee agree otherwise).
- (b) The Trustee has no responsibility to enquire about the application of any money or assets transferred to an Other Fund.

### 1.15 REDUCTIONS IN BENEFITS

#### 1.15.1 Taxation

- (a) The Trustee must comply with the law in force in relation to the deduction and payment of tax.
- (b) The benefits set out in this Deed are gross of tax and the Trustee must:
  - (i) deduct any tax which the law requires it to deduct; and
  - (ii) remit that tax to the proper authority at the appropriate time.
- (c) The Trustee may (but must if the Principal Employer decides that the Employers will not meet any additional associated cost) adjust:
  - (i) the amount of; and
  - (ii) conditions relating to any benefits and contributions,
 as a result of changes in tax or tax arrangements. Any such adjustment will have immediate effect without the necessity of amending this Deed.
- (d) The Trustee may make provision for tax in the accounts of this Fund.

#### 1.15.2 Assignment of Benefit

- (a) A Member or other beneficiary must not assign or charge any benefit under this Fund.
- (b) Any benefit which a Member or other beneficiary assigns or charges is automatically forfeited, except to the extent that the Relevant Law prevents such forfeiture.
- (c) A beneficiary is not taken to have assigned or charged a benefit by becoming bankrupt.

- (d) The Trustee may apply any benefit (or portion of a benefit) which is forfeited under paragraph (b) for:
- (i) the benefit of the beneficiary concerned or the Dependants of that beneficiary (if permitted under Relevant Law); or
  - (ii) the general purposes of this Fund.

#### 1.15.3 Insurance Offset

- (a) If:
- (i) the Trustee has not determined to self-insure the risk; and
  - (ii)
    - (A) insurance is not obtained in respect of some or all Members on the insurer's standard terms; or
    - (B) the level or scope of insurance obtained is restricted in respect of some or all Members; or
    - (C) the insurer does not admit or pay all or part of a claim in respect of a Member,the Trustee must reduce any benefit:
    - (D) otherwise payable on the death or disablement (or both death and disablement) of the Member concerned; and
    - (E) which is not calculated on the basis of:
      - (I) the Member's Account balance; or
      - (II) proceeds of insurance,as the Trustee considers appropriate, unless the Trustee and the Principal Employer agree otherwise.
- (b) If:
- (i) the Trustee has determined to self-insure the risk; but
  - (ii) the Trustee considers that:
    - (A) insurance would not be obtained from an insurer in respect of some or all Members on standard terms; or
    - (B) the level or scope of insurance would have been restricted in respect of some or all Members; or
    - (C) an insurer would not admit or pay all or part of a claim in respect of a Member,the Trustee must reduce any benefit:

- (D) otherwise payable on the death or disablement (or both death and disablement) of the Member concerned; and
- (E) which is not calculated on the basis of the Member's Account balance, as the Trustee considers appropriate, unless the Trustee and the Principal Employer agree otherwise.

#### 1.15.4 Other Scheme Offset

If:

- (a) a Member is entitled to benefit from an Other Fund; and
- (b) part of the costs of providing that benefit is met by the Employer,

the benefits payable in respect of the Member under this Deed must be reduced by the equivalent amount, unless the Employer otherwise agrees.

#### 1.15.5 Corporations Law Restriction

The Trustee may refuse to pay any benefit to the extent that the payment would contravene any provision of the Corporations Law.

#### 1.16 AMENDMENTS

- (a) The Trustee at any time and from time to time by instrument in writing executed by the Trustee and ROCHE PRODUCTS PTY LIMITED or by a resolution of the Directors and of the Trustee or of the Directors of the Trustee if the Trustee is a company may vary rescind or add to all or any of the provisions contained in this Deed and the new provisions so made shall be deemed to have the same effect as if they had been originally contained in this Deed and shall be subject in like manner to be varied rescinded or added to **PROVIDED THAT** no such variation rescission or addition shall operate so as:
  - (i) to reduce the benefits of any Member existing at the date of such variation rescission or addition unless the Member shall consent thereto in writing, or
  - (ii) to enable the benefits of any Member to be paid out of the Fund prior to the death Permanent and Total Disablement retirement resignation or dismissal of that Member.
- (b) The Trustee shall promptly give the Members written notice of any such variation rescission or addition explaining its nature, purpose and its effect (if any) on the entitlements of Members.
- (c) No amendment shall be made to this Deed which would have the effect of permitting a natural person to be appointed Trustee of the Fund unless at the time of the amendment and after the amendment the Fund has, as its sole or primary purpose, the provision of old age pensions.

## **1.17 PROPER LAW AND JURISDICTION**

### **1.17.1 Proper Law**

This Deed is governed by the law in the State of New South Wales. But the Principal Employer and the Trustee may change the governing law to the law of another State or Territory of Australia.

### **1.17.2 Jurisdiction**

No legal action or proceedings in connection with this Fund may be instituted or conducted in any jurisdiction outside Australia.

## **1.18 NOTICES**

### **1.18.1 Giving Notices**

A notice to any person may be given:

- (a) by handing it personally to that person;
- (b) by delivering it to that person's last known address, or in the case of a company, the registered address (delivery may be by any method including by hand, courier and post);
- (c) if it is a notice to an Employee, by placing it on a notice board at that Employee's workplace; or
- (d) if it is a notice to a beneficiary, by placing that notice in a newspaper which the Trustee considers appropriate; or
- (e) by electronic means.

### **1.18.2 Receipt of Notice**

A notice is considered received by the person to whom it was sent:

- (a) on the first normal working day after it was placed on a notice board;
  - (b) two days after publication of the newspaper in which the notice was placed; and
- a notice or a cheque is considered received by the person to whom it was sent:
- (c) on delivery by hand;
  - (d) the day after it was sent by courier or by electronic means; or
  - (e) three days after it was posted.

## **1.19 TERMINATION OF FUND**

### **1.19.1 Circumstances**

The Trustee must terminate this Fund if:

- (a) directed by the Principal Employer to do so;
- (b) all Employers have ceased to participate in this Fund under clause 1.9.2 or have terminated their obligation (or agreement) to contribute to this Fund; or
- (c) if the Principal Employer has ceased to participate in this Fund and no Employer is willing to act as Principal Employer.

#### 1.19.2 Termination Date

The Termination Date is:

- (a) the date the Trustee receives the Principal Employer's direction under clause 1.19.1(a) or any later date specified by the Principal Employer; or
- (b) the date determined by the Trustee where this Fund is terminating under paragraph (b) or (c) of clause 1.19.1.

#### 1.19.3 Arrears of Contributions

Each Employer and each Member must immediately pay any arrears of contributions up to the Termination Date.

#### 1.19.4 Application of Assets

On termination, the Trustee must apply this Fund's assets in the following order of priority:

- (a) all costs, expenses and liabilities which have been incurred or are likely to be incurred in respect of this Fund (including the termination of this Fund);
- (b) any Minimum Guaranteed Benefits;
- (c) the Members' Total Account Balances (less the amount mentioned in paragraph (b)),

but to the extent that the assets are not sufficient, the entitlements under this clause must be proportionately reduced in reverse priority order; and

- (d) any balance must be paid to the Employers in the proportion determined by:
  - (i) the Principal Employer; or
  - (ii) the Trustee if the Principal Employer cannot be located,
 unless:
  - (iii) the Principal Employer requests the Trustee to use all or part of the balance in increasing Members' entitlements and/or pensions then in payment from this Fund and the Trustee agrees; or
  - (iv) the Trustee cannot locate any Employer, then the balance of the assets must be applied in increasing Members' entitlements and pensions then in payment from this Fund on a proportionate basis.

#### 1.19.5 Securing of Entitlements

- (a) The Trustee may make any arrangements it considers appropriate in securing any entitlements of a beneficiary on the termination of this Fund, including:
  - (i) the purchase of an annuity; or
  - (ii) the transfer of assets representing the entitlement to an Other Fund; or
  - (iii) payment to the Member,or any combination of the above,
  - (iv) without the beneficiary's consent; or
  - (v) even if the arrangement is contrary to the beneficiary's wishes,
- (b) On completion of the arrangements under paragraph (a):
  - (i) no person (including any contingent beneficiary) has any right against the Trustee or an Employer in respect of any entitlement under this Fund;
  - (ii) the Trustee is discharged from the trusts of this Fund.
- (c) No person (including any contingent beneficiary) has any right against the Trustee or an Employer in respect of any money or assets transferred to an Other Fund (unless the Principal Employer and the Trustee agree otherwise).
- (d) the Trustee has no responsibility to enquire about the application of any money or assets transferred to an Other Fund.

## PART 2: ACCOUNTS

### 2.1 MEMBERS' ACCOUNTS

#### 2.1.1 Accounts to be Maintained

- (a) The Trustee must establish and maintain in respect of each Member, as required, a Member Account, a Company Account, a Plan Transfer Account, a Rollover Account, a Voluntary Account and a Surcharge Account.
- (b) No Member in respect of whom an Account is created is entitled to any specific asset of the Scheme. The Trustee has an absolute discretion as to which assets of this Fund are applied in the payment of any benefit from this Fund.

#### 2.1.2 Member Account

The following amounts must be credited to a Member's Member Account:

- (a) the Member's Basic Contributions to this Fund;
- (b) any amount credited to this Account under clause 2.2.2; and
- (c) any other amount which the Trustee and the Principal Employer agree is appropriate to credit to this Account,

and the following amounts must be debited to a Member's Member Account:

- (d) any amount debited to this Account under clause 2.3.3;
- (e) any amount which the Trustee determines to debit to this Account because of a transfer out of this Fund;
- (f) the portion of any benefit paid from this Account under this Deed; and
- (g) any other amount which this Deed requires to be debited to this Account or the Trustee considers it appropriate and equitable to debit to this Account,

and interest must be allocated to this Account under clause 2.4.

#### 2.1.3 Company Account

The following amounts must be credited to a Member's Company Account:

- (a) the portion of any Employer contributions, in respect of the Member concerned, which is not credited to any other Account of that Member;
- (b) any amount credited to this Account under clause 2.2.2; and
- (c) any other amount which the Trustee and the Principal Employer agree is appropriate to credit to this Account,

and the following amounts must be debited to a Member's Company Account:

- (d) any amount debited to this Account under clause 2.3.3;

- (e) insurance premiums (including Group Life Insurance) attributable to the Member;
- (f) Fund Expenses other than those covered by paragraph (e) which the Trustee considers it appropriate and equitable to debit to this Account;
- (g) any amount which the Trustee determines to debit to this Account because of a transfer out of this Fund;
- (h) the portion of any benefit paid from this Account under this Deed; and
- (i) any other amount which this Deed requires to be debited to this Account or the Trustee considers it appropriate and equitable to debit to this Account,

and interest must be allocated to this Account under clause 2.4.

#### 2.1.4 Plan Transfer Account

The following amounts must be credited to a Member's Plan Transfer Account:

- (a) any amount credited to this Account under clause 2.2.2;
- (b) the portion of any amount transferred into this Fund from the Plan which the Trustee determines is appropriate to credit to this Account; and
- (c) any other amount which the Trustee and the Principal Employer agree is appropriate to credit to this Account,

and the following amounts must be debited to a Member's Plan Transfer Account:

- (d) any amount debited to this Account under clause 2.3.3;
- (e) any amount which the Trustee determines to debit to this Account because of a transfer out of this Fund;
- (f) the portion of any benefit paid from this Account under this Deed; and
- (g) any other amount which this Deed requires to be debited to this Account or the Trustee considers it appropriate and equitable to debit to this Account,

and interest must be allocated to this Account under clause 2.4.

#### 2.1.5 Rollover Account

The following amounts must be credited to a Member's Rollover Account:

- (a) any amount credited to this Account under clause 2.2.2;
- (b) the portion of any amount transferred into this Fund which is not credited to any other account of that Member and which the Trustee determines is appropriate to credit to this Account; and
- (c) any other amount which the Trustee and the Principal Employer agree is appropriate to credit to this Account,

and the following amounts must be debited to a Member's Rollover Account:

- (d) any amount debited to this Account under clause 2.3.3;
- (e) any amount which the Trustee determines to debit to this Account because of a transfer out of this Fund;
- (f) the portion of any benefit paid from this Account under this Deed; and
- (g) any other amount which this Deed requires to be debited to this Account or the Trustee considers it appropriate and equitable to debit to this Account,

and interest must be allocated to this Account under clause 2.4.

#### 2.1.6 Voluntary Account

The following amounts must be credited to a Member's Voluntary Account:

- (a) the Member's Voluntary Contributions to this Fund;
- (b) any amounts credited to this Account under clause 2.2.2; and
- (c) any other amount which the Trustee and the Principal Employer agree is appropriate to credit to this Account,

and the following amounts must be debited to a Member's Voluntary Account:

- (d) any amount debited to this Account under clause 2.3.3;
- (e) any amount which the Trustee determines to debit to this Account because of a transfer out of this Fund;
- (f) the portion of any benefit paid from this Account under this Deed; and
- (g) any other amount which this Deed requires to be debited to this Account or the Trustee considers it appropriate and equitable to debit to this Account,

and interest must be allocated to this Account under clause 2.4.

#### 2.1.7 Surcharge Account

- (a) The Trustee may for the purposes of the actual or notional accrual of any liability for Tax to establish and conduct an actual or notional account for that purpose in respect of each affected Member.
- (b) The actual or notional account established in respect of any Member may be debited with any Tax liability for the surcharge levied or anticipated to be levied upon the Trustee in respect of the Member and may be credited with:
  - (i) any contribution made by the Member for the purposes of reducing the Tax liability for the Surcharge created in respect of them; and
  - (ii) any excess of anticipated Tax liability already debited over actual Tax liability assessed in respect of that Member,

and interest must be allocated to this Account under clause 2.4.

## 2.2 RESERVE ACCOUNT

### 2.2.1 Maintenance and Operation

The Trustee must establish and maintain a Reserve Account. The following amounts:

- (a) must be credited to the Reserve Account:
  - (i) any amount forfeited to this Fund under this Deed (including an amount forfeited under clause 2.3.4); and
  - (ii) any income received from the investments of this Fund including interest, dividends, rents (unless previously accounted for); and
  - (iii) any capital appreciation on the assets of this Fund including any profit on the realisation of assets (unless previously accounted for); and
  - (iv) any bonus or rebate paid under any Group Life Insurance policy; and
  - (v) any other amount which this Deed requires to be credited to this Account or the Trustee considers it appropriate and equitable to credit to this Account; and
- (b) may be credited to the Reserve Account:
  - (i) any amount of Group Life Insurance paid to this Fund by an insurer on the death or Total and Permanent Disablement of a Member; and
  - (ii) any amount debited to Members' Accounts under clause 2.3.3; and
- (c) must be debited to the Reserve Account:
  - (i) interest allocated to Members' Accounts (or benefits);
  - (ii) any capital appreciation on the assets of this Fund including any loss incurred in the realisation of assets which has not previously been accounted for;
  - (iii) amounts applied under clause 2.2.2;
  - (iv) Fund Expenses not otherwise debited to a Member's Account; and
  - (v) any other amount which this Deed requires to be debited to this Account or the Trustee considers it appropriate and equitable to debit to this Account.

### 2.2.2 Discretionary Application of Reserve

The Trustee and the Principal Employer may agree to apply an amount standing to the credit of the Reserve Account in any manner which is not inconsistent with the Relevant Law.

## 2.3 ACCOUNTS - GENERAL PROVISIONS

### 2.3.1 Accounts in Debit

The Trustee may permit a Member's Account or the Reserve Account to be in debit for any period the Trustee considers reasonable.

### 2.3.2 Sub-Accounts

The Trustee may:

- (a) establish sub-accounts within any Account; and
- (b) maintain and operate any sub-account for any purpose and in any manner the Trustee considers appropriate.

### 2.3.3 Account Expenses

- (a) Each Member's share of the Account Expenses and Group Life Insurance premiums must be:
  - (i) deducted from contributions before they are credited to any or all of the Member's Accounts; or
  - (ii) debited to any or all of the Member's Accounts; or
  - (iii) (with the consent of the Principal Employer) dealt with in any other manner determined by the Trustee; or
  - (iv) any combination of (i), (ii) or (iii),whichever the Trustee determines.
- (b) The Trustee may:
  - (i) debit or deduct a common amount or percentage per Member to meet Account Expenses and Group Life Insurance premiums; and
  - (ii) debit or deduct special or higher amounts from a Member's Accounts in respect of any period when those Accounts are maintained after the Member has left Employment.
- (c) The Trustee may make:
  - (i) any deduction or debit under this clause on an estimated basis; and
  - (ii) appropriate subsequent adjustments to take account of any difference between estimated and actual amounts.

### 2.3.4 Closing of Account

The Trustee must close a Member's Accounts after all benefits which could become payable from this Fund in respect of the Member have been paid or applied. Any amount remaining in a Member's Account at that time is forfeited to this Fund.

## 2.4 ALLOCATION OF INTEREST

Interest, at the Declared Rate, must be allocated to each Member's Accounts as at:

- (a) each Balance Date;
- (b) the date as at which any benefit becomes payable from the Member's Accounts; and

- (c) any other date the Trustee considers appropriate  
but subject to clause 2.5.3.

## 2.5 SPECIAL INVESTMENT ARRANGEMENTS

### 2.5.1 Special Options

The Trustees may:

- (a) establish "Special Portfolios", which are distinct portfolios of:
  - (i) investments; or
  - (ii) classes of investments,within this Fund on any basis and within any parameters the Trustee considers appropriate; and
- (b) permit a Member to elect to have all or any part of the Member's Total Account Balance invested in one or more Special Portfolio; and
- (c) permit a Member to revoke or vary any previous "Special Portfolio" election and to make further elections,

subject to any conditions the Trustee considers appropriate.

### 2.5.2 Overriding Conditions

- (a) The amount which may be invested in respect of any Member in Special Portfolios must not exceed the Member's Total Account Balance.
- (b) Neither the Trustee or a director of a corporate trustee is liable or responsible for any loss, expense or detriment suffered by a Member or other beneficiary person as a result of the exercise or non-exercise of any power of the Trustee under this clause 2.5, including any detriment suffered as a result of:
  - (i) the Trustee's failure to act, or delay in acting, on any election by a Member; or
  - (ii) the disposal of any Special Portfolio or failure to dispose of a Special Portfolio.
- (c) To the extent that paragraph (b) is not sufficient to protect the Trustee or a director from liability then the Trustee and each director is indemnified out of the assets of this Fund to the extent of that liability.

### 2.5.3 Accounting for Special Portfolios

If a part of a Member's Account is invested in a Special Portfolio, the Trustee must take into account:

- (a) extent to which a Member's Account balance is invested in a Special Portfolio; and
- (b) extent to which a Member's Account balance is not invested in a Special Portfolio; and

(c) the investment performance of any Special Portfolio applicable to the Member,  
in determining the interest to be credited to the Member's Accounts.

### **PART 3: CONTRIBUTORY MEMBERS SECTION**

#### **3.1 APPLICATION**

The provisions of this Section shall apply to and in respect of all persons who are for the time being Contributory Members.

#### **3.2 CONTRIBUTORY MEMBERS**

Unless the context otherwise requires, a reference to a Member in this Part 3 shall be a reference to a Contributory Member.

#### **3.3 EMPLOYER CONTRIBUTIONS**

##### **3.3.1 General**

Each Employer must contribute to this Fund:

- (a) in respect of each Member in its Employment;
- (b) the amount specified in Clause 3.3.2;
- (c) for each pay period that the Member is:
  - (i) actively at work;
  - (ii) absent on approved annual or other paid leave;
  - (iii) absent on long service leave; or
  - (iv) absent from work for any other reason where that Employer agrees to contribute.

##### **3.3.2 Rate of Employer Contribution**

- (a) The amount of an Employer contribution is:
  - (i) the amount the Employer and the Trustee agree is required to meet the Minimum SG Benefit; and
  - (ii) the additional amount required to bring the Employer's total contribution to a level of:
    - (A) 12% of the Member's Salary; or
    - (B) any other level the Principal Employer determines.

#### **3.4 MEMBER CONTRIBUTIONS**

##### **3.4.1 Basic Contribution**

Unless the Employer otherwise directs, each Member must contribute to this Fund at the rate of 6% of Salary. These contributions are referred to as "Basic Contributions".

### 3.4.2 Cessation of Basic Contributions on Review Date

With effect from each Review Date, a Member may cease to make Basic Contributions to the Fund, in which case the Member ceases to be a Contributory Member and becomes a Non-Contributory Member. (Part 4 governs Non-Contributory Members.)

### 3.4.3 Voluntary Contribution

In addition to any Basic Contributions a Member is required to make, a Member may make additional contributions to this Fund:

- (a) with the consent of the Principal Employer; and
- (b) subject to such terms, conditions and restrictions as are imposed by the Principal Employer or the Trustee,

these contributions are referred to as "Voluntary Contributions".

## 3.5 BENEFITS

### 3.5.1 Death or Total and Permanent Disablement

- (a) If a Member:

- (i) dies while in Employment; or
- (ii) leaves Employment because of Total and Permanent Disablement,

before reaching age 65 the Trustee must pay:

- (iii) the greater of:

(A)  $17.5\% \times S \times MP$

where  $S =$  Salary at Date of Death

$MP =$  the number of years (with complete months counted as fractions of a year) from the Date Joined Contributory Membership until the Member's Normal Retirement Date

and

- (B) the sum of the Member's Member Account, Company Account and Company SG Account,

PLUS

- (iv) the sum of the Member's Rollover Account, Voluntary Account, Plan Transfer Account and Surcharge Account.

- (b) If a Member, who has not received a benefit under clause 3.5.3:

- (i) dies while in Employment; or

- (ii) leaves Employment because of Total and Permanent Disablement,  
on or after reaching age 65 the Trustee must pay the Member's Total Account Balance.

### 3.5.2 Leaving Employment

A Member who:

- (a) leaves Employment; and
- (b) is not entitled to any other benefit under this Part 3,

is entitled to a benefit (part of which may have to be preserved) equal to the Member's Total Account Balance.

### 3.5.3 Payment on or after age 65

A Member who remains in Employment after reaching age 65 must be paid a benefit equal to the portion of the Member's Total Account Balance:

- (a) which relates to contributions made before the Member reaches age 65, on the earlier of:
  - (i) the Member's death or actual retirement; and
  - (ii) any other Required Payment Date; and
  - (iii) the date the Member requests payment; and
- (b) which relates to any contributions made after the Member reaches age 65, on the earlier of:
  - (i) the Member's death or actual retirement; and
  - (ii) any other Required Payment Date (which may be different from the date mentioned in paragraph (a)(ii)).

## **PART 4: NON-CONTRIBUTORY MEMBERS SECTION**

### **4.1 APPLICATION**

The provisions of this Section shall apply to and in respect of all persons who are for the time being Non-Contributory Members.

### **4.2 NON-CONTRIBUTORY MEMBERS**

Unless the context otherwise requires, a reference to a Member in this Part 4 shall be a reference to a Non-Contributory Member.

### **4.3 EMPLOYER CONTRIBUTIONS**

#### **4.3.1 General**

Each Employer must contribute to this Fund:

- (a) in respect of each Member in its Employment;
- (b) the amount specified in Clause 4.3.2;
- (c) for each pay period that the Member is:
  - (i) actively at work;
  - (ii) absent on approved annual or other paid leave;
  - (iii) absent on long service leave; or
  - (iv) absent from work for any other reason where that Employer agrees to contribute.

#### **4.3.2 Rate of Employer Contribution**

- (a) The amount of an Employer contribution is:
  - (i) the amount the Employer and the Trustee agree is required to meet the Minimum SG Benefit; and
  - (ii) any additional amount the Principal Employer determines.

### **4.4 MEMBER CONTRIBUTIONS**

#### **4.4.1 No Requirement to Contribute**

Members are not require to contribute to this Fund.

#### **4.4.2 Commence to make Basic Contributions on Review Date**

With effect from each Review Date, a Member may commence to contribute Basic Contributions to the Fund at the rate of 6% of Salary, in which case the Member ceases to be a Non-Contributory Member and becomes a Contributory Member. (Part 3 governs Contributory Members.)

#### 4.4.3 Cessation of Basic Contributions

Where, with effect from a Review Date, a Member ceases to make Basic Contributions to the Fund, the Member ceases to be a Special Ex-Plan Member and becomes a Non-Contributory Member.

#### 4.4.4 Voluntary Contribution

A Member may make contributions to this Fund:

- (a) with the consent of the Principal Employer; and
- (b) subject to such terms, conditions and restrictions as are imposed by the Principal Employer or the Trustee,

these contributions are referred to as "Voluntary Contributions".

### 4.5 BENEFITS

#### 4.5.1 Death or Total and Permanent Disablement

- (a) If a Member:
  - (i) dies while in Employment; or
  - (ii) leaves Employment because of Total and Permanent Disablement,before reaching age 65 the Trustee must pay:
  - (iii) the Member's Total Account Balance; plus
  - (iv) any amount of Group Life Insurance paid to this Fund by an insurer on the death or Total and Permanent Disablement of the Member.
- (b) If a Member, who has not received a benefit under clause 4.5.3:
  - (i) dies while in Employment; or
  - (ii) leaves Employment because of Total and Permanent Disablement,on or after reaching age 65 the Trustee must pay the Member's Total Account Balance.

#### 4.5.2 Leaving Employment

A Member who:

- (a) leaves Employment; and
- (b) is not entitled to any other benefit under this Part 4,

is entitled to a benefit (part of which may have to be preserved) equal to the Member's Total Account Balance.

#### 4.5.3 Payment on or after age 65

A Member who remains in Employment after reaching age 65 must be paid a benefit equal to the portion of the Member's Total Account Balance:

- (a) which relates to contributions made before the Member reaches age 65, on the earlier of:
  - (i) the Member's death or actual retirement; and
  - (ii) any other Required Payment Date; and
  - (iii) the date the Member requests payment; and
- (b) which relates to any contributions made after the Member reaches age 65, on the earlier of:
  - (i) the Member's death or actual retirement; and
  - (ii) any other Required Payment Date (which may be different from the date mentioned in paragraph (a)(ii)).

## **PART 5: SPECIAL EX-PLAN MEMBERS SECTION**

### **5.1 APPLICATION**

The provisions of this Section shall apply to and in respect of all persons who are Special Ex-Plan Members.

### **5.2 SPECIAL EX-PLAN MEMBERS**

Unless the context otherwise requires, a reference to a Member in this Part 5 shall be a reference to a Special Ex-Plan Member.

### **5.3 EMPLOYER CONTRIBUTIONS**

#### **5.3.1 General**

Each Employer must contribute to this Fund:

- (a) in respect of each Member in its Employment;
- (b) the amount specified in Clause 5.3.2;
- (c) for each pay period that the Member is:
  - (i) actively at work;
  - (ii) absent on approved annual or other paid leave;
  - (iii) absent on long service leave; or
  - (iv) absent from work for any other reason where that Employer agrees to contribute.

#### **5.3.2 Rate of Employer Contribution**

- (a) The amount of an Employer contribution is:
  - (i) the amount the Employer and the Trustee agree is required to meet the Minimum SG Benefit; and
  - (ii) the additional amount required to bring the Employer's total contribution to a level of:
    - (A) 15% of the Member's Salary; or
    - (B) any other level the Principal Employer determines.

### **5.4 MEMBER CONTRIBUTIONS**

#### **5.4.1 Basic Contributions**

Each Member must contribute to this Fund at such rate, being not less than 4% nor more than 6% of Salary, as the Member shall nominate with effect from each Review Date. These contributions are referred to as "Basic Contributions".

#### 5.4.2 Variation of Basic Contributions on Review Date

With effect from each Review Date, a Member may cease to make Basic Contributions or, subject to Clause 5.4.1, commence to contribute or vary the rate of Basic Contributions to the Fund.

#### 5.4.3 Cessation of Basic Contributions

Where, with effect from a Review Date, a Member ceases to make Basic Contributions to the Fund, the Member ceases to be a Special Ex-Plan Member and becomes a Non-Contributory Member. (Part 4 governs Non-Contributory Members.)

#### 5.4.4 Voluntary Contribution

In addition to any Basic Contributions a Member may make, a Member may make additional contributions to this Fund:

- (a) with the consent of the Principal Employer; and
- (b) subject to such terms, conditions and restrictions as are imposed by the Principal Employer or the Trustee,

these contributions are referred to as "Voluntary Contributions".

### 5.5 BENEFITS

#### 5.5.1 Death or Total and Permanent Disablement

- (a) If a Member:

- (i) dies while in Employment; or
- (ii) leaves Employment because of Total and Permanent Disablement,

before reaching age 65 the Trustee must pay:

- (iii) the greater of:

(A)  $17.5\% \times S \times MP$

where  $S =$  Salary at Date of Death

$MP =$  the number of years (with complete months counted as fractions of a year) from the Date Joined Contributory Membership until the Member's Normal Retirement Date

and

- (B) the sum of the Member's Member Account, Company Account and Company SG Account,

PLUS

- (iv) the sum of the Member's Rollover Account, Voluntary Account, Plan Transfer Account and Surcharge Accounts.

PLUS

- (v) any amount payable under any policy of insurance effected by the Trustee in respect of the Member which provides additional cover in the event of the death or Total and Permanent Disablement of the Member over and above the benefit otherwise payable under the provision of this paragraph (a).
- (b) If a Member, who has not received a benefit under clause 5.5.3:
- (i) dies while in Employment; or
  - (ii) leaves Employment because of Total and Permanent Disablement,
- on or after reaching age 65 the Trustee must pay the Member's Total Account Balance.

#### 5.5.2 Leaving Employment

A Member who:

- (a) leaves Employment; and
- (b) is not entitled to any other benefit under this Part 5,

is entitled to a benefit (part of which may have to be preserved) equal to the Member's Total Account Balance.

#### 5.5.3 Payment on or after age 65

A Member who remains in Employment after reaching age 65 must be paid a benefit equal to the portion of the Member's Total Account Balance:

- (a) which relates to contributions made before the Member reaches age 65, on the earlier of:
  - (i) the Member's death or actual retirement; and
  - (ii) any other Required Payment Date; and
  - (iii) the date the Member requests payment; and
- (b) which relates to any contributions made after the Member reaches age 65, on the earlier of:
  - (i) the Member's death or actual retirement; and
  - (ii) any other Required Payment Date (which may be different from the date mentioned in paragraph 5.5.3(a)(ii)).

OC.

OC.