**DURBAN PENSION FUND**

Passed at a meeting of the Trustees of the Durban Pension Fund held in Durban on 12 August 2021.

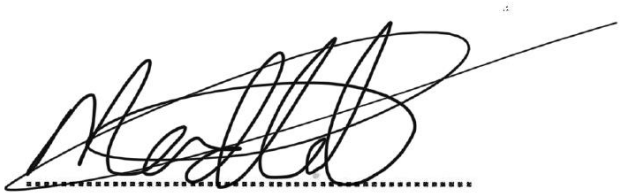
Resolved that the attached RULES be adopted as the official RULES of the Durban Pension Fund.

The attached RULES are the approved rules of the Durban Pension Fund effective 1 January 2008 consolidated to include the approved rule amendments 1 to 11. No amendments have been made in these consolidated rules, other than the index and the page numbering in the index have been updated to reflect the approved rule amendments.

The date on which these RULES shall become effective is 1 August 2021.

**Certified that the Resolution in terms of which these RULES have been accepted has been adopted in accordance with the RULES of the FUND**

**Chairman of BOARD OF TRUSTEES**



**Trustee**

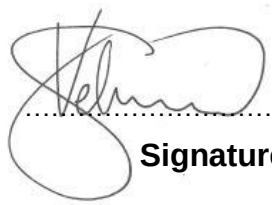
**PRINCIPAL OFFICER**

**Certified that the above amendments are financially sound**.

Gary Velcich

……..

**Actuary to the Fund**



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**Signature**

BBusSc FFA FASSA

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**Qualifications**

**DURBAN PENSION FUND**

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## 1. GENERAL

1.1 The FUND known as the Durban Pension Fund was established with effect from 1 February 1995 and incorporates the Durban Municipal Pension Fund, which was established with effect from 1 August 1967 and the Durban Corporation Superannuation Fund, which was established with effect from 1 March 1899.

1.2 The registered address of the FUND is at Alexander Forbes Place,10 Torsvale Crescent, Torsvale Park, La Lucia Ridge Office Estate, La Lucia.

1.3 The object of the FUND is, in terms of these RULES, to provide retirement and other benefits for beneficiaries.

1.4 The FUND is a separate legal entity distinct from its MEMBERS and shall be capable in law of suing and of being sued and of acquiring, holding and alienating property, movable and immovable.

1.5 These RULES incorporate all amendments up to and including 1 January 2008 and shall replace the rules previously in force for all MEMBERS at that date. If the registration of these RULES in terms of the ACT is effected later than 1 January 2008 the RULES shall nevertheless take effect from 1 January 2008.

## 2. DEFINITIONS

In these RULES words defined in the RULES and not in the ACT shall have the meaning assigned to them in the RULES, words defined in the ACT shall have the meanings assigned to them in the ACT and, unless inconsistent with the context, all words and expressions signifying the singular shall include the plural and vice versa, words and expressions implying the masculine gender shall include the feminine, and the following words and expressions shall have the following meanings:

"ACCUMULATED CONTRIBUTIONS" shall mean for each ACTIVE MEMBER at any particular date the total of his CONTRIBUTIONS to the FUND in terms of Rule 4.1.1 and Rule 4.1.2; plus interest at the rate of 5/12% for each month for which he had paid contributions to the FUND, increased by 5% for each complete year for which he has paid contributions to the FUND, subject to a maximum of 100%.

“ACT" shall mean the Pension Funds Act, 1956, as amended, and the regulations framed thereunder.

"ACTIVE MEMBER" shall mean a MEMBER who, having been admitted to membership of the FUND, remains in SERVICE or is deemed to remain in SERVICE.

“ACTIVE MEMBER ACCOUNT” shall mean the account established in terms of Rule 17.7.

"ACTUARY" shall mean an ACTUARY as defined in the ACT.

"ADMINISTRATOR" shall mean the ADMINISTRATOR appointed in terms of these RULES who has been approved as an ADMINISTRATOR by the AUTHORITY.

“ANNUAL GENERAL MEETING” shall mean the meeting referred to in Rule 16.5.11.

“APPOINTED TRUSTEE” shall mean a TRUSTEE appointed by the EMPLOYER in terms of Rule 16.2.

"APPROVED PENSION FUND" shall mean a pension fund approved as such by the REVENUE AUTHORITY for the purpose of these RULES.

“APPROVED PROVIDENT FUND” shall mean a provident fund approved as such by the REVENUE AUTHORITY for the purpose of these RULES.

"APPROVED RETIREMENT ANNUITY FUND" shall mean a retirement annuity fund approved as such by the REVENUE AUTHORITY.

“AUTHORITY” shall prior to 1 April 2018, mean the Registrar of Pension Funds referred to in the ACT and thereafter the Financial Sector Conduct Authority established in terms of Section 56 of the Financial Sector Regulation Act, 2017.

“BOARD OF TRUSTEES” shall mean the BOARD OF TRUSTEES appointed or elected in terms of these RULES.

“BONUS SERVICE” shall mean additional SERVICE which shall be allocated as follows:

1 Year after 20 years of QUALIFYING SERVICE;

2 Years after 25 years of QUALIFYING SERVICE;

3 Years after 30 years of QUALIFYING SERVICE;

“CONTRIBUTIONS” shall mean the amounts paid or payable by the ACTIVE MEMBER to the FUND in terms of Rule 4.1.1 and Rule 4.1.2 exclusive of interest and the amounts payable by the EMPLOYER in terms of Rule 4.2.

“CONTRIBUTION STABILISATION RESERVE” shall mean the CONTRIBUTION STABILISATION RESERVE established in terms of Rule 17.10.

"DEFERRED PENSIONER" shall mean a MEMBER whose benefit on leaving SERVICE in terms of Rule 10 or on transfer out of the FUND, if so elected by the MEMBER, in terms of Rule 12.4, has been preserved in the FUND as a deferred PENSION, the payment of which PENSION has not yet commenced.

“DEPENDANT” shall mean a DEPENDANT as defined in the ACT.

“ELECTED TRUSTEE” shall mean an ACTIVE MEMBER, DEFERRED PENSIONER or PRINCIPAL PENSIONER of the FUND or QUALIFYING SPOUSE in receipt of a PENSION from the FUND elected by the ELIGIBLE VOTERS in terms of Rule 16.3.

“ELIGIBLE VOTER” shall mean an ACTIVE MEMBER, DEFERRED PENSIONER, PRINCIPAL PENSIONER, or QUALIFYING SPOUSE in receipt of a PENSION from the FUND.

“EMPLOYER” shall mean the eThekwini Municipality or its successor in title.

“EMPLOYER CONTRIBUTION RESERVE ACCOUNT” shall mean the EMPLOYER CONTRIBUTION RESERVE ACCOUNT established in terms of Rule 17.13.

“EMPLOYER SURPLUS ACCOUNT” shall mean the EMPLOYER SURPLUS ACCOUNT established in terms of Rule 17.8.

“FINAL PENSIONABLE SALARY” shall mean for each ACTIVE MEMBER the annual amount equivalent to the average of an ACTIVE MEMBER’S monthly rate of PENSIONABLE SALARY taken at the end of each calendar month over the last 12 completed calendar months of his PENSIONABLE SERVICE, provided that:

(a) if the ACTUARY certifies that such period of 12 months can be reduced without additional CONTRIBUTIONS being paid by ACTIVE MEMBERS or by the EMPLOYER, the BOARD OF TRUSTEES may reduce such period of 12 months to a period approved by the ACTUARY, with effect from a date determined by the BOARD OF TRUSTEES and approved by the EMPLOYER; and

(b) if an ACTIVE MEMBER has been employed part-time during his period of PENSIONABLE SERVICE:

(i) for the purpose of calculating his FINAL PENSIONABLE SALARY, his PENSIONABLE SALARY during the period of part-time employment shall be divided during the period of part-time employment by the PART-TIME RATIO; and

(ii) for the purpose of calculating any part of a benefit that is based on PENSIONABLE SERVICE while he was in part-time employment, his FINAL PENSIONABLE SALARY shall be multiplied by the PART-TIME RATIO.

"FINANCIAL YEAR" shall mean each twelve-month period ending on 31 December.

"FUND" shall mean the Durban Pension Fund.

“LOCAL AUTHORITY” shall mean

(a) the EMPLOYER;

(b) anybody or institution having in any respect the functions and duties of a municipal or other similar local institution; and/or

(c) a body similar to that described in paragraph (b) constituted in terms of the Municipal Finance Management Act No. 56 of 2003.

"MEMBER" shall mean a person who belongs or belonged to the FUND but shall not include a former member or other person who has received all the benefits which may be due to him from the FUND and whose membership has terminated.

“MEMBER SURPLUS ACCOUNT” shall mean the MEMBER SURPLUS ACCOUNT established in terms of Rule 17.9.

“MINIMUM INDIVIDUAL RESERVE” shall mean the MINIMUM INDIVIDUAL RESERVE for an ACTIVE MEMBER, PENSIONER or DEFERRED PENSIONER as determined by the ACTUARY in accordance with Section 14B (2) (a) and Section 14B (6) of the ACT using methods and assumptions prescribed by the AUTHORITY by notice in the Government Gazette.

"NORMAL RETIREMENT AGE" shall mean age 63 years.

“NORMAL RETIREMENT DATE” shall mean the day on which the ACTIVE MEMBER or DEFERRED PENSIONER reaches the NORMAL RETIREMENT AGE.

“PART-TIME RATIO” shall mean for an ACTIVE MEMBER who is employed part-time, the proportion that the number of hours that he is engaged to work in each normal week bears to the number of hours that an ACTIVE MEMBER who is employed full-time is engaged to work in each normal week, as determined by the EMPLOYER.

"PENSION" shall mean the annual pension payable in terms of these RULES.

“PENSION PRESERVATION FUND” shall mean a pension preservation fund approved as such by the RESERVE AUTHORITY for the purposes of these RULES.

“PROVIDENT PRESERVATION FUND” shall mean a provident preservation fund approved as such by the REVENUE AUTHORITY for the purposes of these RULES.

"PENSIONABLE SALARY" shall mean the monthly, weekly, daily or hourly pay, as the case may be of an ACTIVE MEMBER, and shall include:

(a) any personal salary allowance; and

(b) the estimated rental value of quarters, whether belonging to the EMPLOYER or not, whenever an ACTIVE MEMBER is allowed to occupy quarters free of rent as a portion of his emoluments, or any allowance granted in lieu of the provision of free quarters, and the estimated rental value of such free quarters shall, for the purposes of the FUND, be fixed from time to time by the EMPLOYER, but shall exclude:

(i) any payments for overtime work;

(ii) any fees or honoraria of any kind;

(iii) any locomotion, boot, clothing or subsistence allowance;

(iv) any performance bonus; and

(v) any other class of payment or allowance of any nature whatsoever, unless declared to be pensionable by the EMPLOYER after considering a report from the BOARD OF TRUSTEES after consultation with an ACTUARY on the financial effect on the FUND,

provided that:

(aa) if for any reason an ACTIVE MEMBER is transferred from employment in a higher grade to employment in a lower grade, he may elect not later than three months after the date of such transfer to contribute, while his PENSIONABLE SALARY is less than if he had remained in the higher grade, as if his PENSIONABLE SALARY was applicable to the higher grade (with allowance for increments within

that grade), in which event, as from the date of such election his PENSIONABLE SALARY shall be deemed to be the PENSIONABLE SALARY on which he contributed before being transferred to employment on a lower grade, provided that an ACTIVE MEMBER

who has made such an election may at any time cancel such election and contribute amounts based on his PENSIONABLE SALARY based on the lower grade; and/or

(bb) if an ACTIVE MEMBER who is entitled to make an election in terms of this Rule does not do so or if he cancels his election, any PENSION that becomes payable to or in respect of him in respect of PENSIONABLE SERVICE to the date of reduction or cancellation shall not be less than the PENSION based on that PENSIONABLE SERVICE and the FINAL PENSIONABLE SALARY that he would have had if he had remained in the higher grade.

"PENSIONABLE SERVICE" shall mean for each ACTIVE MEMBER:

(a) the periods until the date of his retirement or earlier leaving SERVICE, during which an employee has been an ACTIVE MEMBER of the FUND, which shall include authorised leave of absence and shall not be regarded as interrupted by breaks in SERVICE condoned by the EMPLOYER and the BOARD OF TRUSTEES, provided that any amount paid from the FUND to the ACTIVE MEMBER shall be repaid to the FUND either in a lump sum or by instalments on terms to be determined by the BOARD OF TRUSTEES, provided that a break in SERVICE on change of employment from a part-time basis to a full-time basis, or vice versa, shall be deemed to have been condoned and the ACTIVE MEMBER shall pay CONTRIBUTIONS in terms of Rule 4.1.1 and Rule 4.1.2 to the FUND in respect of the break in SERVICE on the basis of his PENSIONABLE SALARY after the break and the period of such break shall be PENSIONABLE SERVICE;

(b) any period purchased in terms of Rule 13.1;

(c) any period transferred from another pension fund operated by a LOCAL AUTHORITY, which was recognised as pensionable service in terms of the rules of such fund;

(d) for the purposes only of Rule 13.2, any other period of continuous SERVICE with the EMPLOYER in a permanent capacity before the date of becoming an ACTIVE MEMBER, in respect of which no benefit has been received from the FUND;

(e) BONUS SERVICE for the purposes of Rule 5,

provided that:

(i) for the purposes of paragraphs (a), (b), (c) and (e) any period of SERVICE or absence without payment of CONTRIBUTIONS shall be excluded; and

(ii) when an ACTIVE MEMBER leaves the SERVICE, his period of PENSIONABLE SERVICE shall be calculated in completed years and months and a fraction of a month shall be disregarded and shall include the periods referred to in paragraphs (a), (b), (c) (d) and (e) above.

“PENSIONER” shall mean a person who is in receipt of a PENSION from the FUND.

“PENSIONER ACCOUNT” shall mean the account established in terms of Rule 17.6.

“PENSIONER SURPLUS RESERVE ACCOUNT” shall mean the PENSIONER SURPLUS RESERVE ACCOUNT established in terms of Rule 17.12.

"PRINCIPAL OFFICER" shall mean the PRINCIPAL OFFICER of the FUND appointed in terms of these RULES.

“PRINCIPAL PENSIONER” shall mean a PENSIONER who contributed to the FUND while in the SERVICE of the EMPLOYER and became entitled to a PENSION from the FUND on his retirement in terms of these RULES.

“QUALIFYING CHILD” shall mean a child of a MEMBER and shall include an illegitimate child, a posthumous child, a step-child, an adopted child and any other child who for the purposes of these RULES is deemed by the BOARD OF TRUSTEES to be an adopted child, provided that the child has not been married and is either:

(a) under the age of eighteen years; or

(b) is under the age of twenty-four years and in the opinion of the BOARD OF TRUSTEES, is receiving full-time education towards a qualification recognised by the BOARD OF TRUSTEES and is able to provide such evidence of successful progress as may be required by the BOARD OF TRUSTEES from time to time,

provided further that:

(i) in the case of a PRINCIPAL PENSIONER, or DEFERRED PENSIONER either the QUALIFYING CHILD was a QUALIFYING CHILD when such PRINCIPAL PENSIONER or DEFERRED PENSIONER commenced retirement or was born of a RECOGNISED MARITAL UNION which had commenced, or was deemed to have commenced, before retirement commenced; and

(ii) if a QUALIFYING CHILD who qualifies as such in terms of (b) above, in the opinion of the BOARD OF TRUSTEES, either:

(aa) ceases to be in receipt of full-time education towards a qualification recognised by the BOARD OF TRUSTEES, for whatever reason; or

(bb) fails to provide evidence of his successful educational progress to the BOARD OF TRUSTEES;

he shall cease to be regarded as a QUALIFYING CHILD.

“QUALIFYING PARENT” shall mean a person who proves to the satisfaction of the BOARD OF TRUSTEES that he was the parent of a deceased ACTIVE MEMBER and whose financial circumstances are regarded by the BOARD of TRUSTEES in its discretion as inadequate.

“QUALIFYING SERVICE” shall mean in relation to an ACTIVE MEMBER, the total of his PENSIONABLE SERVICE excluding:

(a) BONUS SERVICE;

(b) any period purchased in terms of Rule 13.1; and

(c) any period included in paragraph (c) of the definition PENSIONABLE SERVICE that was purchased by the ACTIVE MEMBER in terms of any similar rule in any other pension fund operated by a LOCAL AUTHORITY.

“QUALIFYING SPOUSE” shall mean in relation to a MEMBER, the surviving spouse of the MEMBER, who shall be a person who is either:

(a) the permanent life partner, spouse or civil union partner of a MEMBER in accordance with the Marriage Act, 1961 (Act No.68 of 61), the Recognition of Customary Marriages Act 1998 (Act No.68 of 1997) or the Civil Union Act, 2006 (Act No.17 of 2006) or in accordance with the tenets of any religion; or

(b) a permanent life partner in a cohabitation or dependence (by virtue of financial or other maintenance) of a MEMBER and another person, which is deemed a RECOGNISED MARITAL UNION by the BOARD OF TRUSTEES,

provided that such spouse was in a RECOGNISED MARITAL UNION existing at the time of the death of the MEMBER.

“RECOGNISED MARITAL UNION” shall mean a legal marriage, a customary union according to Black Law and custom, a union recognised as a marriage under any religion, or a cohabitation or dependence referred to in clause (b) of the definition QUALIFYING SPOUSE, provided that a RECOGNISED MARITAL UNION may, at the discretion of the BOARD OF TRUSTEES, include a marriage which has been dissolved but where the other person is still financially dependent upon the MEMBER.

"REGISTERED INSURER" shall mean an insurer registered in terms of the Long-term Insurance Act, 1998.

“REPUBLIC” shall mean the REPUBLIC of South Africa.

"REVENUE AUTHORITY" shall mean the South African Revenue Service or its successor, if applicable.

“RISK RESERVE ACCOUNT” shall mean the RISK RESERVE ACCOUNT established in terms of Rule 17.5.

"RULES" shall mean these rules and such amendments as may at any time be in force.

"SERVICE" shall mean employment in the SERVICE of the EMPLOYER and shall include any period during which an ACTIVE MEMBER is deemed to remain in SERVICE in terms of Rule 11.

“SURPLUS APPORTIONMENT DATE” shall mean 31 December 2003, as determined in accordance with the ACT.

“SOLVENCY RESERVE” shall mean the SOLVENCY RESERVE established in terms of Rule 17.11.

"TRUSTEE" shall mean a member of the BOARD OF TRUSTEES.

## 3. MEMBERSHIP

3.1 With effect from 1 November 2001, the FUND was closed to new membership.

3.2 Each person who was a MEMBER of the FUND immediately prior to 1 January 2008 shall remain a MEMBER of the FUND, subject to the provisions of the RULES.

3.3 An ACTIVE MEMBER who joined the FUND prior to 1 November 2001 was required to be examined by a medical officer in the employment of the EMPLOYER. The medical officer was required to certify whether the ACTIVE MEMBER was afflicted with any physical or mental defect likely to shorten life, or likely to result in a greater than normal risk of early retirement on account of ill-health. If the BOARD OF TRUSTEES considered such ACTIVE MEMBER'S health to be unsatisfactory, the ACTIVE MEMBER became subject to such restrictions in benefits as might be determined by the BOARD OF TRUSTEES, acting on the advice of the ACTUARY and was notified of the restrictions in writing by the FUND.

3.4 If an ACTIVE MEMBER made a false declaration or knowingly failed to disclose, when being medically examined, that he had suffered or was suffering from an illness or condition that would have caused the BOARD OF TRUSTEES to find his health unsatisfactory, or failed to be medically examined when so required, the benefit payable in terms of Rule 5.3, if such ACTIVE MEMBER is retired from the SERVICE in terms of the provisions of that Rule, or the benefit payable in terms of Rule 6.1 if such ACTIVE MEMBER dies in SERVICE before attaining the NORMAL RETIREMENT AGE shall be determined as though notification of a restriction of benefits had been given in accordance with Rule 3.3.

3.5 An ACTIVE MEMBER shall not be permitted to withdraw from membership while he remains in SERVICE.

3.6 A MEMBER who has left SERVICE for any reason and has received all the benefits which may be due to him in terms of these RULES shall cease to be a MEMBER.

# 4. CONTRIBUTIONS

## 4.1 CONTRIBUTIONS by the ACTIVE MEMBER

4.1.1 Each ACTIVE MEMBER who has not reached NORMAL RETIREMENT AGE shall contribute to the FUND at the rate of 8.2% of his PENSIONABLE SALARY.

4.1.2 In addition, the ACTIVE MEMBER shall contribute, with effect from a date decided by the BOARD OF TRUSTEES on the advice of an ACTUARY, an additional amount calculated by the ACTUARY as being equal to that percentage of his PENSIONABLE SALARY which, with the corresponding CONTRIBUTIONS payable by the EMPLOYER in terms of Rule 4.2.1 is required to ensure, within the period required by the AUTHORITY, that the ACTIVE MEMBER ACCOUNT is financially sound.

4.1.3 In addition to the CONTRIBUTIONS in terms of Rule 4.1.1 and Rule 4.1.2, the ACTIVE MEMBER shall contribute, with effect from a date decided by the BOARD OF TRUSTEES on the advice of an ACTUARY, an additional amount calculated by the ACTUARY as being equal to that percentage of his PENSIONABLE SALARY which, with the corresponding CONTRIBUTIONS payable by the EMPLOYER in terms of Rule 4.2.3 is required to meet the increased cost in securing the benefits payable to ACTIVE MEMBERS in terms of the RULES, due to a strengthening of the FUND'S valuation basis and any improvement in the level of benefits offered by the FUND. This additional amount will be shared in the ratio of 1 to 2.4 times between the ACTIVE MEMBERS and the EMPLOYER respectively.

4.1.4 Each ACTIVE MEMBER'S CONTRIBUTIONS shall be deducted by his EMPLOYER from his PENSIONABLE SALARY and paid to the FUND.

**4.2 CONTRIBUTIONS by the EMPLOYER**

4.2.1 The EMPLOYER shall make monthly CONTRIBUTIONS to the FUND equivalent to 2.4 times the CONTRIBUTIONS in terms of Rule 4.1.1 and Rule 4.1.2. Out of such CONTRIBUTIONS by the EMPLOYER:

(a) such amounts as may be recommended by the ACTUARY shall be transferred to the ACTIVE MEMBER ACCOUNT; and

4.2.2 In addition to the CONTRIBUTIONS in terms of Rule 4.2.1, the EMPLOYER shall contribute such amounts as may be recommended by the ACTUARY to ensure the PENSIONER ACCOUNT is financially sound.

4.2.3 In addition to the CONTRIBUTIONS in terms of Rule 4.2.1 and 4.2.2, the EMPLOYER shall contribute, with effect from a date decided by the BOARD OF TRUSTEES on the advice of an ACTUARY, an additional ongoing amount calculated by the ACTUARY, which is required to meet the increased cost in securing the benefits payable to ACTIVE MEMBERS in terms of the RULES, due to a strengthening of the FUND’S valuation basis and any improvement in the level of benefits offered by the FUND. This additional amount will be shared in the ratio of 1 to 2.4 times between the ACTIVE MEMBERS and the EMPLOYER respectively.

4.2.4 Notwithstanding any other provisions of these RULES:

(a) if the actuarial valuation of the FUND in terms of Rule 17.4 reveals that an increase in the rate of CONTRIBUTIONS is required in order to mitigate the effect of an increase in the average age of the membership as a result of the closure of the FUND to new membership and/or as a result of the transfer of MEMBERS and assets to an APPROVED PENSION FUND, APPROVED PROVIDENT FUND or APPROVED RETIREMENT ANNUITY FUND, the EMPLOYER shall increase its CONTRIBUTIONS in terms of Rule 4.2.1 to the amount recommended by the ACTUARY and for such period of time as the ACTUARY determines is necessary in order to fund such increase in the rate of CONTRIBUTIONS; and

(b) the EMPLOYER shall guarantee the provision of any funding required to ensure a minimum PENSION increase of 100% of the Consumer Price Index (CPI). This guarantee is to be applied annually, and is conditional upon the FUND only needing to invoke the guarantee should the PENSIONER pool assets fall below the PENSIONER liabilities, calculated on the FUND's then best estimate assumptions (as contained in its statutory valuation report), for the financial year. The cost of the guarantee is to be calculated and certified by the ACTUARY, as the lesser of the amount required to increase the PENSIONER pool assets to equal the best estimate liabilities, and an amount equal to the PENSION increase percentage times by the PENSIONER pool best estimate liabilities.

## 4.3 CONTRIBUTIONS Paid to the FUND

95% of the CONTRIBUTIONS due, rounded to the nearest R1000, shall be paid to the FUND on the Day on which the CONTRIBUTIONS are deducted, and the balance of the CONTRIBUTIONS shall be paid to the FUND within seven days after the end of the month in respect of which the CONTRIBUTIONS were made. If CONTRIBUTIONS are not paid to the FUND as required in terms of this Rule and the ACT, the EMPLOYER shall be required to pay late payment interest at the rate prescribed in the ACT. Any such interest shall be included in the investment return on the assets of the FUND.

# 5. PENSION BENEFITS

## 5.1 Retirement at NORMAL RETIREMENT DATE

5.1.1 An ACTIVE MEMBER shall be entitled to retire on attaining his NORMAL RETIREMENT AGE and shall thereupon become entitled to a PENSION equal in amount to 2.25% of his FINAL PENSIONABLE SALARY for each year of his PENSIONABLE SERVICE.

5.1.2 An ACTIVE MEMBER who was employed in the Fire Department and who, while so employed, was allocated to operational duties under the three platoon system shall retire on attaining an age equal to the NORMAL RETIREMENT AGE reduced by a period of years calculated at the rate of one year for each completed five year period of operational duties under the three platoon system since his last break in SERVICE with the EMPLOYER, if any, or at such later date before attaining the NORMAL RETIREMENT AGE as he and the EMPLOYER agree. The PENSION payable to such an ACTIVE MEMBER shall be equal to 2.25% of his FINAL PENSIONABLE SALARY at the date of retirement for each year of his PENSIONABLE SERVICE. It is specifically provided that:

(a) the period of operational duties shall include one-half of any period of SERVICE since his last break in SERVICE with the EMPLOYER in the Fire Department in the post of Division Commander (Operations); and

(b) PENSION payments and increases in terms of Rule 9 and bonuses in terms of Rule 5.6 shall be paid by the EMPLOYER until the PENSIONER dies or attains the NORMAL RETIREMENT AGE, whichever is the sooner and thereafter shall be paid from the FUND.

## 5.2 Voluntary Early Retirement

5.2.1 An ACTIVE MEMBER who has had not less than 10 years' PENSIONABLE SERVICE and has attained the age of 55 years may retire from SERVICE and shall receive a PENSION payable in accordance with the following table:

| **Age at Retirement** | **Percentage of FINAL PENSIONABLE SALARY for each year of PENSIONABLE SERVICE** |
|---|---|
| 55 | 1.48 |
| 56 | 1.56 |
| 57 | 1.66 |
| 58 | 1.75 |
| 59 | 1.84 |
| 60 | 1.93 |
| 61 | 2.04 |
| 62 | 2.14 |
| 63 | 2.25 |

If the ACTIVE MEMBER'S age at retirement is not an exact number of years, allowance shall be made by interpolation for completed months of age in determining the PENSION.

5.2.2 An ACTIVE MEMBER who has completed at least forty years' continuous service with the EMPLOYER or at least forty years' QUALIFYING SERVICE may retire at any time before attaining the NORMAL RETIREMENT AGE, in which event the percentage for the purpose of calculating his PENSION shall be that applicable at the NORMAL RETIREMENT AGE in terms of Rule 5.1.

5.2.3 An ACTIVE MEMBER who, has had not less than 10 years' PENSIONABLE SERVICE while employed in the Fire Department and who, while so employed, was allocated to operational duties under the three platoon system, may retire at any time on or after attaining the age of 55 years, in which case he shall receive a benefit calculated in accordance with the table in Rule 5.2.1 at his actual age at retirement, increased by a period of years calculated at the rate of one year for each completed five year period of operational duties under the three platoon system since his last break in SERVICE with the EMPLOYER if any. It is specifically provided that:

(a) the period of operational duties shall include one-half of any period of SERVICE since his last break in SERVICE with the EMPLOYER in the Fire Department in the post of Division Commander (Operations); and

(b) PENSION payments and increases in terms of Rule 9 and bonuses in terms of Rule 5.6 shall be paid by the EMPLOYER until the PENSIONER dies or attains the NORMAL RETIREMENT AGE, whichever is the sooner and thereafter shall be paid from the FUND.

**5.3 Ill-Health Early Retirement**

5.3.1 An ACTIVE MEMBER who has not attained the NORMAL RETIREMENT AGE and who has become, in the opinion of the BOARD OF TRUSTEES, after taking medical advice, incapacitated from efficiently discharging his duties by reason of infirmity of body or mind caused through no fault of his own shall be retired and shall, subject to the provisions of Rule 5.3.2, receive a PENSION calculated in terms of Rule 5.1, provided that the PENSION shall not be less than the following percentage of the PENSION the ACTIVE MEMBER would have been granted had he remained in SERVICE and paid CONTRIBUTIONS to the NORMAL RETIREMENT AGE and his FINAL PENSIONABLE SALARY had remained unchanged:

| **Number of completed years of QUALIFYING SERVICE at date of retirement** | **Percentage** |
|---|---|
| 0 | 30 |
| 1 | 33 |
| 2 | 36 |
| 3 | 39 |
| 4 | 42 |

| | |
|---|---|
| 5 | 45 |
| 6 | 48 |
| 7 | 51 |
| 8 | 54 |
| 9 | 57 |
| 10 or more | 60 |

provided further that the BOARD OF TRUSTEES may, if a PRINCIPAL PENSIONER who retired in terms of this Rule is earning an income and has not attained the NORMAL RETIREMENT AGE, in its absolute discretion reduce or revoke his PENSION until such PRINCIPAL PENSIONER reaches the NORMAL RETIREMENT AGE, at which time the PENSION shall be recalculated with any period of SERVICE utilised in calculating his PENSION being reduced by a period equivalent to the period over which the PENSION paid was reduced or revoked.

5.3.2 If an ACTIVE MEMBER in respect of whom certain restrictions apply in terms of Rule 3.3 is retired before completing fifteen years' QUALIFYING SERVICE because of an infirmity that, in the opinion of the BOARD OF TRUSTEES, is or is the result of a defect that caused it to find his health unsatisfactory, his benefit shall not be a PENSION, but shall be:

(a) if he has had less than ten years' QUALIFYING SERVICE, a lump sum equal to 16% of his FINAL PENSIONABLE SALARY per year of PENSIONABLE SERVICE; or

(b) if he has had not less than ten years' QUALIFYING SERVICE, a benefit determined by the BOARD OF TRUSTEES after consulting the ACTUARY, but not less in value than 16% of his FINAL PENSIONABLE SALARY per year of PENSIONABLE SERVICE.

**5.4 Late Retirement**

5.4.1 Subject to the consent of the EMPLOYER, an ACTIVE MEMBER who has reached his NORMAL RETIREMENT AGE may remain in SERVICE and retire at a date not later than the day he attains the age of 65 years. CONTRIBUTIONS by and on behalf of the ACTIVE MEMBER shall, in such an event, continue until the actual date of such late retirement.

5.4.2 On retirement after his NORMAL RETIREMENT AGE, the MEMBER shall receive a PENSION vesting on the day of the MEMBER'S actual retirement, calculated in accordance with the following table:

| **Age at Retirement** | **Percentage of FINAL PENSIONABLE SALARY for each year of PENSIONABLE SERVICE** |
|---|---|
| 63 | 2.25 |
| 64 | 2.36 |
| 65 | 2.47 |

5.4.3 If an ACTIVE MEMBER'S age at late retirement is not an exact number of years, allowance shall be made by interpolation for completed months of age in determining the benefit payable.

**5.5 Retrenchment and Reorganisation**

5.5.1 An ACTIVE MEMBER who has attained the age of forty years, who has had not less than ten years QUALIFYING SERVICE, and whose office is abolished by the EMPLOYER, or who is compulsorily retired from the SERVICE by the EMPLOYER for a reason other than one specified elsewhere in the RULES, shall be granted a PENSION calculated in terms of Rule 5.1, provided that:

(a) such PENSION and increases in terms of Rule 9 and bonuses in terms of Rule 5.6 shall be paid by the EMPLOYER until the PRINCIPAL PENSIONER dies or attains the NORMAL RETIREMENT AGE, whichever is the sooner and thereafter shall be paid from the FUND; and

(b) the EMPLOYER shall also pay to the FUND the difference between the gratuity paid to the ACTIVE MEMBER in terms of Rule 13.2 and the capital value of the gratuity that would have been payable to the ACTIVE MEMBER at the NORMAL RETIREMENT AGE in respect of his PENSIONABLE SERVICE at the date of his retirement in terms of this Rule, before any increase in terms of Rule 9 as determined by the BOARD OF TRUSTEES acting on the advice of the ACTUARY.

5.5.2 An ACTIVE MEMBER whose office is abolished by the EMPLOYER, or who is compulsorily retired from SERVICE by the EMPLOYER for a reason other than one specified elsewhere in these RULES, and who is not granted a PENSION in terms of Rule 5.5.1 shall be paid a lump sum equal to the greater of:

(a) his MINIMUM INDIVIDUAL RESERVE; and

(b) his ACCUMULATED CONTRIBUTIONS at the date of leaving SERVICE.

## 5.6 Payment of Bonuses

5.6.1 In November of each year, the FUND shall pay to each person in receipt of a PENSION a bonus equal to 1/12$^{th}$ of his PENSION; provided that in the first year in which the annual bonus is paid to:

(a) a PRINCIPAL PENSIONER, the bonus shall be calculated pro-rata the annual bonus for each completed month in respect of which the PENSION is payable from the date on which the PENSION commenced until 31 October of that year;

(b) a PENSIONER in receipt of a PENSION in terms of Rule 6.1, the bonus shall be calculated pro rata the annual bonus for each completed month in respect of which the PENSION is payable from the date on which the PENSION commenced until 31 October of that year; and

(c) a PENSIONER in receipt of a PENSION in terms of Rule 6.2, the bonus shall be calculated pro rata the annual bonus for each completed month, not exceeding 12, from the date on which the applicable PRINCIPAL PENSIONER commenced retirement until 31 October of that year.

5.6.2 The BOARD OF TRUSTEES shall have power, subject to the approval of the ACTUARY, to grant a special bonus to a PRINCIPAL PENSIONER or a QUALIFYING SPOUSE of a MEMBER on attainment of the age of 70 years, 80 years, 90 years or 100 years.

# 6. DEATH BENEFITS

## 6.1 Death in SERVICE

6.1.1 The following benefits shall be payable on the death in SERVCE of an ACTIVE MEMBER who is not an ACTIVE MEMBER referred to in Rule 6.1.2:

(a) a lump sum equal to the lump sum the ACTIVE MEMBER would have received had he retired on the date of his death in terms of Rule 5.3 and the BOARD OF TRUSTEES had commuted one-third of his PENSION for a lump sum in terms of Rule 8;

(b) to his QUALIFYING SPOUSE, a PENSION equal to the following percentage of the PENSION calculated in terms of Rule 5, that he would have been granted had he remained in the SERVICE and paid CONTRIBUTIONS to the NORMAL RETIREMENT AGE and his FINAL PENSIONABLE SALARY had remained unchanged:

| Number of completed years of QUALIFYING SERVICE at date of retirement | Percentage |
|---|---|
| 0 | 30 |
| 1 | 33 |
| 2 | 36 |
| 3 | 39 |
| 4 | 42 |
| 5 | 45 |
| 6 | 48 |
| 7 | 51 |
| 8 | 54 |
| 9 | 57 |
| 10 or more | 60 |

provided that if an ACTIVE MEMBER who has deferred his retirement in terms of Rule 5.4 dies in SERVICE, the percentage applicable in determining the benefit in terms of this Rule 6.1.1 (b) shall be 60%;

(c) in respect of any QUALIFYING CHILD, a PENSION equal to a percentage of the PENSION granted to the QUALIFYING SPOUSE according to the following scale:

| Number of QUALIFYING CHILDREN | Percentage |
|---|---|
| 1 | 25 |
| 2 | 40 |
| 3 | 50 |
| 4 | 60 |
| 5 or more | 66 2/3 |

provided that:

(i) if the ACTIVE MEMBER does not leave a QUALIFYING SPOUSE, the PENSION payable in respect of the QUALIFYING CHILDREN shall be double that which would have been paid had he left a QUALIFYING SPOUSE;

(ii) subject to the provisions of paragraph (c) in Appendix B, the total of the PENSIONS payable to the QUALIFYING SPOUSE and the QUALIFYING CHILDREN of any deceased ACTIVE MEMBER shall not at any time be greater than the PENSION that he would have received had he been retired in terms of Rule 5.3 at the date of his death;

(d) if an ACTIVE MEMBER dies while in SERVICE leaving neither a QUALIFYING SPOUSE nor a QUALIFYING CHILD, but leaves a DEPENDANT or a QUALIFYING PARENT, the BOARD OF TRUSTEES may grant to the DEPENDANT and/or the QUALIFYING PARENT, a PENSION not greater in total than that which would have been granted had the deceased ACTIVE MEMBER been survived by a QUALIFYING SPOUSE; any such PENSION may be increased, reduced or terminated by the BOARD OF TRUSTEES if it decides that such a course is justified by the changed financial position of such DEPENDANT or QUALIFYING PARENT or for any other reason deemed sufficient by the BOARD OF TRUSTEES.

(e) if an ACTIVE MEMBER dies while in SERVICE and does not leave a QUALIFYING SPOUSE, a QUALIFYING CHILD, a DEPENDANT or a QUALIFYING PARENT, a lump sum equal to the residual value (if any) of the ACTIVE MEMBER'S MINIMUM INDIVIDUAL RESERVE, after taking into account the benefit referred to in Rule 6.1.1 (a) and the gratuity payable in terms of Rule 13.2.

6.1.2 If an ACTIVE MEMBER in respect of whom certain restrictions apply in terms of Rule 3.3, dies in SERVICE before completing fifteen years' QUALIFYING SERVICE from an illness that, in the opinion of the BOARD OF TRUSTEES, is or is a result of the defect that caused it to find his health unsatisfactory, there shall be payable to his DEPENDANTS, instead of a PENSION, the MEMBER'S MINIMUM INDIVIDUAL RESERVE, after taking into account the gratuity payable in terms of Rule 13.2.

## 6.2 Death after Retirement

6.2.1 On the death of a PRINCIPAL PENSIONER his PENSION shall cease as provided for in Rule 7.3 (i) and the following benefits shall be payable :

(a) subject to the provisions of Rule 8.3 and Rule 8.4, a PENSION to his QUALIFYING SPOUSE, equal to 60% of the PENSION payable immediately prior to the death of the PRINCIPAL PENSIONER, provided that:

(i) on the death of a PRINCIPAL PENSIONER who has retired in terms of Rule 5.3.1, a PENSION shall be payable to his QUALIFYING SPOUSE in terms of Rule 6.1.1(b) as if he died on the date of retirement; and

(ii) the QUALIFYING SPOUSE shall receive a PENSION equal to the PENSION the PRINCIPAL PENSIONER was receiving at the date of his death for a further period of three months after the date of his death unless the sum of the PENSIONS payable in (a) above and (b) below is greater than the PRINCIPAL PENSIONER'S PENSION. No QUALIFYING CHILD'S PENSION shall be payable during this three month period, if applicable; and

(b) subject to the provisions of Rule 8.3, a PENSION in respect of any QUALIFYING CHILD of the PRINCIPAL PENSIONER, commencing on the PRINCIPAL PENSIONER'S death or at the end of the three month period in (ii) above if applicable, equal to a percentage of the QUALIFYING SPOUSE'S PENSION, in accordance with the following table :

| **Number of QUALIFYING CHILDREN** | **Percentage of QUALIFYING SPOUSE'S PENSION** |
|---|---|
| 1 | 25 |
| 2 | 40 |
| 3 | 50 |
| 4 | 60 |
| 5 or more | 66 2/3 |

provided further that:

(i) the PENSION payable in respect of any QUALIFYING CHILD of a PRINCIPAL PENSIONER shall be doubled for any month for which no PENSION is payable to a QUALIFYING SPOUSE of the PRINCIPAL PENSIONER in terms of (a) above;

(ii) if the RECOGNISED MARITAL UNION with the QUALIFYING SPOUSE commenced or was deemed to have commenced after the PRINCIPAL PENSIONER retired, the PENSION granted to the QUALIFYING SPOUSE shall be equal to 40% of the PRINCIPAL PENSIONER'S PENSION, but the PENSION granted in respect of any QUALIFYING CHILD shall be calculated as if the RECOGNISED MARITAL UNION had commenced or was deemed to have commenced before he retired; and

(iii) the total of the PENSIONS granted to the QUALIFYING SPOUSE and QUALIFYING CHILDREN of the PRINCIPAL PENSIONER shall not at any time be greater than the PENSION that the PRINCIPAL PENSIONER was receiving or would have been receiving had the BOARD OF TRUSTEES not commuted part of it.

6.2.2 If a PRINCIPAL PENSIONER dies, and no PENSION is payable in terms of Rule 6.2.1 (a) or Rule 6.2.1 (b), a lump sum equal to the residual value (if any) of the PRINCIPAL PENSIONER'S MINIMUM INDIVIDUAL RESERVE at retirement, after taking into account the value of the instalments of PENSION already paid to the PRINCIPAL PENSIONER and reduced by any amount commuted in terms of Rule 8.1 and any gratuity paid in terms of Rule 13.2 shall become payable.

6.2.3 If the number of QUALIFYING SPOUSES or QUALIFYING CHILDREN changes for any reason, the PENSIONS payable in respect of them in terms of Rule 6.1.1 or Rule 6.2.1 shall be recalculated, if necessary, and re-apportioned.

6.2.4 Notwithstanding the other provisions of this Rule, if a lump sum benefit becomes payable to a QUALIFYING SPOUSE or any QUALIFYING CHILDREN, the BOARD OF TRUSTEES may, in its absolute discretion, apportion any lump sum benefit among the QUALIFYING SPOUSE, any QUALIFYING CHILDREN and any other DEPENDANTS of the deceased PRINCIPAL PENSIONER, in terms of the provisions of Section 37C of the ACT.

## 6.3 Death of a DEFERRED PENSIONER

6.3.1 If a DEFERRED PENSIONER dies before his PENSION becomes payable, the provisions of Rule 6.1.1 shall apply, *mutatis mutandis*, provided that the PENSION payable to his QUALIFYING SPOUSE shall be equal to 60% of the PENSION enhanced in terms of Rule 9 that he would have been receiving had he been retired in terms of Rule 5.3 on the date of leaving the SERVICE and no part of his PENSION had been commuted.

6.3.2 If a DEFERRED PENSIONER dies after his PENSION becomes payable, the provisions of Rule 6.2 shall apply *mutatis mutandis*; provided that, for the purpose of determining when a RECOGNISED MARITAL UNION commenced or was deemed to have commenced, he shall be deemed to have retired on the date on which his PENSION became payable.

## 6.4 Payment of Death Benefits

Payment of a death benefit which is not expressed in Rule 6 to be paid to a particular person shall be made in terms of Section 37C of the ACT.

## 6.5 Reinsurance

Notwithstanding anything to the contrary contained in these RULES, the BOARD OF TRUSTEES may decide to reinsure the benefits payable in terms of Rule 6.1 and Rule 6.3, in whole or in part, with a REGISTERED INSURER, as contemplated in Rule 17.1.3.

## 7. PAYMENT OF PENSION

7.1 Each PENSION payable in terms of these RULES shall be paid from the FUND.

7.2 A PENSION is payable monthly. The first payment of PENSION shall be due at the end of the calendar month in which:

(a) an ACTIVE MEMBER or DEFERRED PENSIONER retires or dies: or

(b) a PRINCIPAL PENSIONER dies,

provided that the PENSION shall be a proportion of a full payment if the death or retirement occurs during a calendar month.

7.3 The last payment of a PENSION shall be paid

(i) on the death of a PRINCIPAL PENSIONER, subject to the provisions of Rule 6.2.1 (a) (ii), or of the QUALIFYING SPOUSE or other DEPENDANT;

(ii) when a QUALIFYING CHILD dies or ceases to be a QUALIFYING CHILD, whichever is the sooner; or

(iii) when a QUALIFYING PARENT who is receiving a PENSION dies, or when the BOARD OF TRUSTEES ceases payment of such PENSION due to the improved financial circumstances of such QUALIFYING PARENT, whichever is the sooner,

provided that, subject to Rule 6.2.1 (a) (ii), the PENSION shall be a proportion of a full payment if a PRINCIPAL PENSIONER, QUALIFYING SPOUSE, QUALIFYING CHILD, QUALIFYING PARENT or DEPENDANT dies during a calendar month, or if a QUALIFYING CHILD or QUALIFYING PARENT ceases to qualify as a QUALIFYING CHILD or QUALIFYING PARENT during a calendar month.

7.4 The following shall apply to payment of PENSIONS to QUALIFYING SPOUSES and QUALIFYING CHILDREN:

(a) if the deceased ACTIVE MEMBER, DEFERRED PENSIONER or PRINCIPAL PENSIONER leaves more than one QUALIFYING SPOUSE, the BOARD OF TRUSTEES shall decide to which of them and in what proportion the benefits shall be paid, provided that the total PENSIONS payable to all the QUALIFYING SPOUSES shall be equal to the PENSION that would have been payable had there only been one QUALIFYING SPOUSE, provided further that if there is more than one QUALIFYING SPOUSE, the PENSION payable in respect of the QUALIFYING CHILDREN shall not be doubled until all the PENSIONS payable to the QUALIFYING SPOUSES have ceased;

(b) PENSIONS in respect of QUALIFYING CHILDREN shall be paid to or for the benefit of such QUALIFYING CHILDREN as the BOARD OF TRUSTEES may decide; provided that if there is more than one QUALIFYING CHILD, the total amount payable for all QUALIFYING CHILDREN shall be divided by the number of QUALIFYING CHILDREN from time to time in order to determine the amount of PENSION payable in respect of each QUALIFYING CHILD;

(c) if a MEMBER dies directly or indirectly as a result of a war, whether declared or not, in which the REPUBLIC is engaged, a PENSION granted to the QUALIFYING SPOUSE, QUALIFYING CHILD or DEPENDANT of such MEMBER in terms of these RULES may, in the absolute discretion of the BOARD OF TRUSTEES, be reduced if the recipient is granted a pension by the Government of the REPUBLIC; and

(d) notwithstanding anything contained in these RULES, the total amount of the benefit paid in terms of these RULES to or in respect of the deceased MEMBER, shall not be less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE.

7.5 The BOARD OF TRUSTEES shall be entitled to request proof to its satisfaction as to the identity and right of any beneficiary to any benefit before payment of any benefit is made to such beneficiary. Accordingly, each person in receipt of a PENSION shall provide such evidence of his survival or continued eligibility as the BOARD OF TRUSTEES may require. If such evidence is not produced, then the BOARD OF TRUSTEES may direct that payment of the PENSION be suspended until such evidence is produced.

7.6 When a person in receipt of a PENSION dies, a proportion of any PENSION, corresponding to the period since the last payment, shall be paid to his estate.

## 8. COMMUTATION OF PENSION

8.1 At or before the commencement date of a PENSION, payable to a retiring ACTIVE MEMBER or DEFERRED PENSIONER, the BOARD OF TRUSTEES, in its absolute discretion may commute for a lump sum:

(a) the whole of the PENSION if it does not exceed the limit set by the REVENUE AUTHORITY from time to time; or

(b) at the request of an ACTIVE MEMBER or DEFERRED PENSIONER whose PENSION exceeds the amount referred to in (a), not more than one-third of the PENSION, provided that the request is made on or before the date of retirement and that if the resultant uncommuted balance is less than the amount referred to in (a) above, the BOARD OF TRUSTEES may commute the whole of the PENSION.

8.2 The amount of a lump sum provided for in Rule 8.1 shall be determined by the BOARD OF TRUSTEES on the advice of the ACTUARY.

8.3 If the whole of a PENSION is commuted in terms of Rule 8.1(a), no PENSION shall be payable in respect of the QUALIFYING SPOUSE, QUALIFYING CHILD, QUALIFYING PARENT or DEPENDANT of the ACTIVE MEMBER or DEFERRED PENSIONER, and this shall be taken into account in the determination of the lump sum in terms of Rule 8.2.

8.4 If part of a PENSION is commuted in terms of Rule 8.1(b), the PENSION that may be payable to the QUALIFYING SPOUSE or to any QUALIFYING CHILDREN shall not be affected.

8.5 If the whole or part of a PENSION payable in terms of Rule 5.5 is commuted, the EMPLOYER shall pay on demand to the FUND an amount determined by the BOARD OF TRUSTEES acting on the advice of the ACTUARY.

## 9. INCREASES IN BENEFITS

The BOARD OF TRUSTEES shall review the level of PENSIONS being paid from the FUND and shall have power to direct that PENSIONS and deferred PENSIONS be increased. Any increase in PENSIONS and deferred PENSIONS shall be paid in terms of the pension increase policy adopted by the EMPLOYER and the BOARD OF TRUSTEES in consultation with the ACTUARY from time to time. It is specifically provided that no increase granted in terms of the pension increase policy shall be reduced except in accordance with the policy.

It is further recorded that the FUND's pension increase policy, decided upon and agreed to in consultation with the EMPLOYER, is to increase PENSIONS by 100 percent of the Consumer Price Inflation (CPI).

# 10. TERMINATION OF SERVICE

## 10.1 Benefit

Subject to the provisions of Rule 13.1.4, if an ACTIVE MEMBER leaves SERVICE in circumstances not provided for elsewhere in these RULES, he shall become a DEFERRED PENSIONER and receive a deferred PENSION, subject to the provisions of Rule 10.3; provided that on leaving SERVICE an ACTIVE MEMBER may instead elect to withdraw from the FUND and to receive a lump benefit equal to the greater of:

(a) his MINIMUM INDIVIDUAL RESERVE; and

(b) his ACCUMULATED CONTRIBUTIONS.

## 10.2 Provisions applicable to a DEFERRED PENSIONER

If an ACTIVE MEMBER becomes a DEFERRED PENSIONER, he shall become entitled to a PENSION calculated in terms of Rule 5, as at the date of leaving SERVICE. The PENSION shall be payable from the NORMAL RETIREMENT DATE and the following conditions shall apply:

(a) the DEFERRED PENSIONER may elect that his PENSION shall become payable before attaining the NORMAL RETIREMENT DATE in terms of Rule 5.2;

(b) the deferred PENSION shall be adjusted with any increases to PENSIONS in terms of Rule 9 and such reasonable expenses as the TRUSTEES may determine;

(c) if, in the opinion of the BOARD OF TRUSTEES, after taking medical advice, such DEFERRED PENSIONER has been retired from later employment due to ill-health, for which he would have been retired from SERVICE in terms of Rule 5.3, a PENSION calculated in terms of Rule 5.3 and allowing for any increases in terms of Rule 9 shall be payable to him;

(d) when his PENSION becomes payable in terms of the provisions of this Rule, he may elect to commute part of the PENSION in terms of Rule 8.1;

(e) a DEFERRED PENSIONER, other than a MEMBER who elected in terms of Rule 12.4 to become a DEFFERED PENSIONER, may at any time elect that the benefit equal to the amount that he would have received on the date of leaving SERVICE in terms of Rule 10.1 above with interest at such rate as may be decided by the BOARD OF TRUSTEES on the advice of the ACTUARY; be

(i) paid to him as a lump sum; or

(ii) transferred to another APPROVED PENSION FUND, an APPROVED PROVIDENT FUND, an APPROVED RETIREMENT ANNUITY FUND or a PENSION PRESERVATION FUND; provided that:

(aa) in the case of transfer to an APPROVED PROVIDENT FUND, the amount so transferred shall be less any tax payable thereon;

(bb) transfer to a PENSION PRESERVATION FUND is subject to the requirements of the REVENUE AUTHORITY as specified from time to time;

(f) if the DEFERRED PENSIONER dies, benefits in terms of Rule 6.3 shall become payable;.

(g) after the date of leaving SERVICE no further contributions by or in respect of the DEFERRED PENSIONER shall be made in terms of the RULES and no deductions shall be made from the DEFERRED PENSIONER'S benefit in respect of any risk benefits;

(h) the DEFERRED PENSIONER, or if applicable his beneficiaries, shall not be entitled to any benefits from the FUND other than the benefits provided for in terms of this Rule 10.2;

(i) each DEFERRED PENSIONER shall have access to retirement benefits counselling before the benefit to which he is entitled in terms of Rule 10 is paid as a retirement benefit or the benefit referred to in (e) above is paid to such MEMBER in terms of (e)(i) above or transferred to another fund in terms of (e)(ii) above.

**10.3 Payment of Benefit**

10.3.1 A MEMBER who has elected to withdraw from the FUND in terms of Rule 10.1 may, instead of receiving the benefit as a lump sum, elect to transfer the benefit to another APPROVED PENSION FUND, an APPROVED PROVIDENT FUND, an APPROVED RETIREMENT ANNUITY FUND or a PENSION PRESERVATION FUND; provided that:

(a) in the case of transfer to an APPROVED PROVIDENT FUND, the amount so transferred shall be less an tax payable thereon;

(b) transfer to a PENSION PRESERVATION FUND is subject to the requirements of the REVENUE AUTHORITY as specified from time to time.

10.3.2 If a MEMBER has elected to withdraw from the FUND in terms of RULE 10.1, then subject to the provisions of RULE 15.2, the benefit shall be paid to him or transferred to another fund as soon as possible after the date of leaving SERVICE.

10.3.3 If a MEMBER who leaves SERVICE in terms of this Rule dies after electing to receive payment of his benefit but before payment of his benefit has been made, the benefit shall be paid to his estate as a lump sum.

10.3.4 When a transfer is to be made in terms of Rule 10.2(e)(ii) or Rule 10.3.1 and the MEMBER for whom the transfer is to be made is indebted to the Fund or the EMPLOYER for an amount which may be deducted from the MEMBER'S benefit in terms of Rule 15.2, the BOARD OF TRUSTEES shall have the right to deduct from the amount to be transferred the amount of the debt together with any tax payable thereon.

## 10.4 Special Provisions

10.4.1 Notwithstanding any other provisions of these RULES, if an ACTIVE MEMBER retires on attaining the NORMAL RETIREMENT AGE or if the ACTIVE MEMBER resigns after attaining the NORMAL RETIREMENT AGE, he may elect to receive a benefit in terms of Rule 10.1 instead of a PENSION.

10.4.2 If there is any doubt in a particular case as to the Rule under which a benefit shall be granted, the decision of the EMPLOYER on the reason for the ACTIVE MEMBER leaving the SERVICE, shall be binding upon the ACTIVE MEMBER and the BOARD OF TRUSTEES.

## 11. TEMPORARY ABSENCE

11.1 When an ACTIVE MEMBER is on leave with full pay or with pay less than full pay, he shall continue to contribute on the basis of his full PENSIONABLE SALARY, provided that if the whole of his CONTRIBUTIONS in terms of Rule 4.1.1 and Rule 4.1.2 cannot be deducted in terms of Rule 4.1.3, the balance shall be deducted from his salary or wages, or otherwise paid in full, not later than six months after his return to duty.

11.2 When an ACTIVE MEMBER is on leave without pay, he shall have the right to contribute on the basis of the full PENSIONABLE SALARY he would have received in that period had he not been on leave, provided that the right is exercised in writing to the BOARD OF TRUSTEES not later than one month after his return to duty, and that the arrear CONTRIBUTIONS are paid within six months of his return to duty. If the ACTIVE MEMBER does not so elect, the period of leave shall not be included in his PENSIONABLE SERVICE.

## 12 TRANSFERS OUT OF THE FUND

12.1 If the EMPLOYER decides to also participate in or to establish another APPROVED PENSION FUND or an APPROVED PROVIDENT FUND, then , subject to the approval of the BOARD OF TRUSTEES, in respect of each ACTIVE MEMBER who is eligible for membership of such fund and who wishes to transfer, an amount determined by the ACTUARY, provided this shall not be less than the value of the ACTIVE MEMBER'S MINIMUM INDIVIDUAL RESERVE, shall be transferred in accordance with the provisions of Section 14 of the ACT, to such APPROVED PROVIDENT FUND or APPROVED PENSION FUND, provided that if such fund is an APPROVED PROVIDENT FUND the following shall apply:

(a) each such ACTIVE MEMBER may elect that the BOARD OF TRUSTEES shall transfer an amount equal to his ACCUMULATED CONTRIBUTIONS to the FUND to an APPROVED RETIREMENT ANNUITY FUND or, after payment of any tax thereon, to the APPROVED PROVIDENT FUND; and

(b) the BOARD OF TRUSTEES shall also transfer the balance of the amount referred to in the first paragraph of this Rule to such APPROVED PROVIDENT FUND.

12.2 The EMPLOYER shall have the right to request that the PENSIONERS be transferred to such APPROVED PENSION FUND or APPROVED PROVIDENT FUND in which case, if the BOARD OF TRUSTEES, at its discretion, agrees to such a request, the BOARD OF TRUSTEES shall transfer the appropriate proportion of the PENSIONER ACCOUNT, as determined by the ACTUARY, to such new fund; provided that the BOARD OF TRUSTEES shall also have the right to request the EMPLOYER to agree to the transfer of PENSIONERS to an APPROVED PENSION or APPROVED PROVIDENT FUND and if the EMPLOYER agrees, the transfer of PENSIONERS shall take place in accordance with the provisions of this Rule.

12.3 The BOARD OF TRUSTEES may arrange for each PENSION being paid by the FUND to be purchased from a REGISTERED INSURER in the name of the person entitled to the PENSION, subject to the following:

(a) the PENSION shall be purchased on terms and conditions that are on the whole no less favourable than the PENSIONER'S PENSION in terms of these RULES;

(b) the PENSION so purchased shall be subject to the provisions of the Income Tax Act, 1962, the Long-term Insurance Act, 1998 and any requirements specified by the REVENUE AUTHORITIES from time to time; and

(c) on purchase of the PENSION in terms of this RULE, the FUND shall have no further liability in respect of the PENSION, such liability resting with the REGISTERED INSURER from whom such PENSION has been purchased.

12.4 In the event that the EMPLOYER ceases to contribute to the FUND as envisaged in Rule 14.1.1 (c) read with Rule 14.1.6 and decides to participate in or to establish another APPROVED PENSION FUND or APPROVED PROVIDENT FUND as contemplated in Rule 12.1, and an ACTIVE MEMBER who is required to join an APPROVED PENSION FUND or APPROVED PROVIDENT FUND does not wish to transfer his benefit to such fund in terms of the provisions of Rule 12.1, the BOARD OF TRUSTEES may agree that such ACTIVE MEMBER may elect to become a DEFFERED PENSIONER and that accordingly the provisions of Rule 10.2 shall apply mutatis mutandis to the treatment of the benefit retained in the FUND in respect of such DEFFERED PENSIONER.

# 13. ADDITIONAL SERVICE AND GRATUITY

## 13.1 Additional SERVICE

13.1.1 Notwithstanding the provisions of these RULES, an ACTIVE MEMBER may at any time purchase a period or a further period of PENSIONABLE SERVICE, provided that the total of the periods so purchased shall not make his total PENSIONABLE SERVICE greater than the PENSIONABLE SERVICE he would have had, had he joined the SERVICE at the age of sixteen years and remained continuously in the SERVICE.

13.1.2 In respect of any period of PENSIONABLE SERVICE purchased in terms of Rule 13.1.1, the ACTIVE MEMBER shall pay a once-off amount in cash to the FUND, determined by the BOARD OF TRUSTEES acting in accordance with the advice of an ACTUARY.

13.1.3 Any amount paid to the FUND in respect of PENSIONABLE SERVICE purchased by an ACTIVE MEMBER shall be taken into account in calculating a payment to be made in terms of Rule 7.4 (d).

13.1.4 If the ACTIVE MEMBER leaves the SERVICE and elects to withdraw from the FUND in terms of Rule 10.1, he shall be refunded the original amount that was paid in terms of Rule 13.1.2, plus interest at such rate as may be decided by the BOARD OF TRUSTEES on the advice of the ACTUARY.

## 13.2 Gratuity

13.2.1 In addition to the other benefits specified in these RULES, there shall be paid on the death of an ACTIVE MEMBER or DEFERRED PENSIONER, or on the retirement of an ACTIVE MEMBER in terms of Rule 5 or when a PENSION becomes payable to a DEFERRED PENSIONER in terms of Rule 10.2, a gratuity in accordance with the following table:

| **Age at Retirement** | **% of FINAL PENSIONABLE SALARY for each year of PENSIONABLE SERVICE** |
|---|---|
| 55 | 4,335 |
| 56 | 4,668 |
| 57 | 5,001 |
| 58 | 5,334 |
| 59 | 5,667 |
| 60 | 6,000 |
| 61 | 6,333 |
| 62 | 6,666 |
| 63 | 7,000 |
| 64 | 7,000 |
| 65 | 7,000 |

provided that:

(a) PENSIONABLE SERVICE is subject to the provisions of paragraphs (d) and (e) in Appendix B;

(b) the percentage for the purpose of calculating the gratuity:

(i) for an ACTIVE MEMBER or DEFERRED PENSIONER retiring in terms of Rule 5.1.2, Rule 5.2.2, Rule 5.3 or Rule 5.5; or

(ii) upon the death of an ACTIVE MEMBER or a DEFERRED PENSIONER;

shall be that applicable at the NORMAL RETIREMENT AGE;

(c) the percentage for the purpose of calculating the gratuity for an ACTIVE MEMBER or DEFERRED PENSIONER retiring in terms of Rule 5.2.3 shall be that applicable at the age determined in terms of Rule 5.2.3; and

(d) if the ACTIVE MEMBER'S or DEFERRED PENSIONER'S age at retirement or upon death is not an exact number of years, allowance shall be made by interpolation for completed months of age in determining the benefit.

13.2.2 If the gratuity is payable on the death of the ACTIVE MEMBER or DEFERRED PENSIONER, the BOARD OF TRUSTEES shall pay such gratuity in accordance with the provisions of Section 37C of the ACT.

13.2.3 If the gratuity is payable when a PENSION becomes payable to a DEFERRED PENSIONER in terms of Rule 10.2, it shall be increased from the date of calculation to the date it becomes payable at the same rate as PENSIONS are increased in terms of Rule 9.

# 14. TERMINATION AND PARTIAL TERMINATION OF THE FUND

## 14.1 Termination of the FUND

14.1.1 The FUND may be terminated:

(a) by the BOARD OF TRUSTEES;

(b) by order of court;

(c) subject to Rule 14.16, if the EMPLOYER decides unanimously that the FUND be dissolved, subject to giving six months' notice to the BOARD OF TRUSTEES; or

(d) if the EMPLOYER should for any reason cease to operate, provided that if the EMPLOYER ceases to operate for the purposes of reconstruction or amalgamation, such reconstructed or amalgamated organisation shall have the right to replace the EMPLOYER in the FUND, in which event the FUND shall not otherwise be affected.

14.1.2 If the FUND is to be terminated, the following provisions shall apply, subject to the provisions of Section 28 of the ACT:

(a) the BOARD OF TRUSTEES shall, subject to the approval of the AUTHORITY, appoint a liquidator who must, subject to the provisions of this Rule, liquidate the FUND with effect from the date of the AUTHORITY 'S approval of his appointment;

(b) in accordance with the instructions of the liquidator, the total moneys available under the FUND after payment of all expenses incurred in the liquidation shall be applied to provide benefits for all PENSIONERS, DEFERRED PENSIONERS and ACTIVE MEMBERS on an equitable basis recommended by the ACTUARY and approved by the liquidator;

(c) the liquidator shall allocate the balance in the PENSIONER ACCOUNT to the PENSIONERS and DEFERRED PENSIONERS on a basis determined by the ACTUARY. The amount available for each PENSIONER and DEFERRED PENSIONER shall be applied as follows:

(i) in the case of a PENSIONER, the amount allocated by the liquidator shall be used to purchase a PENSION from a REGISTERED INSURER in the name of the PENSIONER on terms and conditions that are as similar to the PENSIONER'S PENSION in terms of these RULES as is reasonably possible, provided that the PENSION purchased from a REGISTERED INSURER shall be:

(aa) purchased in the name of the person entitled to the PENSION; and

(bb) compulsory, non commutable and payable for life; and

(ii) in the case of a DEFERRED PENSIONER, the amount allocated by the liquidator in respect of each DEFERRED PENSIONER shall include an equitable portion of the RISK RESERVE ACCOUNT and shall be applied as contemplated in (d) below; and

(d) the liquidator shall allocate the balance in the ACTIVE MEMBER ACCOUNT and an equitable portion of the RISK RESERVE ACCOUNT to the ACTIVE MEMBERS on a basis determined by the ACTUARY. The amount available under (b) above for an ACTIVE MEMBER or other person prospectively entitled to a PENSION shall, as directed by the liquidator, either:

(i) be transferred for his benefit to another APPROVED PENSION FUND, PENSION PRESERVATION FUND APPROVED PROVIDENT FUND or APPROVED RETIREMENT ANNUITY FUND; or

(ii) if the ACTIVE MEMBER or DEFERRED PENSIONER so requests, be paid to him as a lump sum benefit,

provided that:

(aa) in the case of transfer to an APPROVED PROVIDENT FUND, the amount so transferred shall be less any tax payable thereon; and

(bb) transfer to a PENSION PRESERVATION FUND is subject to the requirements of the REVENUE AUTHORITY as specified from time to time;

and

(e) if a person to whom an amount is payable cannot be traced, the amount referred to in (b) shall be paid to a national fund established by legislation for the purpose of housing unclaimed benefits, or to a fund established by an administrator for the same purpose.

14.1.3 In making an apportionment in terms of Rule 14.1.2(b) the liquidator shall take into consideration every person who left SERVICE during the period of at least twelve months ending on the date of commencement of liquidation. Such person's apportionment shall be reduced by the amount of the benefit which he received on leaving SERVICE.

14.1.4 When all payments have been made by the FUND in terms of Rule 14.1.2, the FUND shall have no further liability to any person and the FUND'S registration in terms of the ACT shall be cancelled.

14.1.5 It is specifically provided that the provisions of the Pension Funds Second Amendment Act, Act No. 39 of 2001, shall over-ride any conflicting provisions in this Rule 14.1, in particular with regard to payment of minimum benefits and the rights of the stakeholders.

14.1.6 Notwithstanding the provisions of Rule 14.1.2, Rule 14.1.3 and Rule 14.1.4 , in the event that the EMPLOYER gives notice to the FUND of its intention to dissolve the FUND in terms of Rule 14.1.1 (c), the BOARD OF TRUSTEES may decide to continue the FUND for the benefit of the ACTIVE MEMBERS and/or the PENSIONERS and/or DEFFERED PENSIONERS and to amend the RULES as necessary.

## 14.2 Partial Termination

Since only one EMPLOYER participates in the FUND, subject to changes to legislation and any requirements of the AUTHORITY, there shall be no circumstances in which this FUND shall be required to undergo partial termination in accordance with the provisions of Section 28 (1) of the ACT.

## 15. DEDUCTION FROM BENEFITS

15.1 By arrangement with the beneficiary concerned, the FUND may on behalf of that person:

(a) make payment of such person's subscription to a registered medical scheme;

(b) make payment of such person's insurance premium to a REGISTERED INSURER; and/or

(c) make payment for any other purpose approved by the AUTHORITY on conditions determined by him,

and for any such purpose the BOARD OF TRUSTEES may, notwithstanding anything to the contrary contained in these RULES, deduct the amount involved from the benefit to which such person is entitled in terms of the RULES and pay such amount, when due, to such medical scheme, REGISTERED INSURER or other body, as the case may be.

15.2 In addition to their powers in terms of Rule 15.1, and notwithstanding anything to the contrary contained in these RULES, the BOARD OF TRUSTEES shall have the right to make such further deductions from the benefit to which a MEMBER or other beneficiary is entitled in terms of the RULES as are permitted in terms of Section 37D(1)(a),(b) and (c) of the ACT and in respect of which a claim has been lodged in writing with the BOARD OF TRUSTEES within such reasonable time of the event giving rise to the benefit as the BOARD OF TRUSTEES may from time to time fix for making such claims.

Notwithstanding any other provisions of these RULES, the BOARD OF TRUSTEES may, provided the EMPLOYER has instituted legal proceedings in a court of law and/or laid a criminal charge against the MEMBER concerned for compensation in respect of damage caused to the EMPLOYER as contemplated in Section 37D of the ACT, withhold payment of the benefit until such time as the matter has been finally determined by a competent court of law or has been settled or formally withdrawn, provided that:

(a) the amount withheld shall not exceed the amount that may be deducted in terms of Section 37D(b)(ii) of the ACT;

(b) the BOARD OF TRUSTEES in their reasonable discretion is satisfied that the EMPLOYER has made out a *prima facie* case against the MEMBER concerned and there is reason to believe that the EMPLOYER has a reasonable chance of success in the proceedings that have been instituted;

(c) the BOARD OF TRUSTEES is satisfied that the EMPLOYER is not at any stage of the proceedings responsible for any undue delay in the prosecution of the proceedings;

(d) once the proceedings have been determined, settled or withdrawn, any benefit to which the MEMBER is entitled is paid forthwith; and

(e) the BOARD OF TRUSTEES, at the express written request of a MEMBER whose benefit is withheld, may, if applicable and practical, permit the value of the MEMBER'S benefit as at the time of such request to be isolated, in whatever manner the BOARD OF TRUSTEES believes appropriate, from the possibility of a decrease therein as a result of poor investment performance.

15.3 If an ACTIVE MEMBER or DEFERRED PENSIONER is retiring on PENSION, the BOARD OF TRUSTEES shall have the right to commute for a lump sum an amount of the PENSION up to the maximum amount which may be commuted in terms of Rule 8 and to make the deduction from such lump sum.

15.4 Subject to the provisions of the ACT, the BOARD OF TRUSTEES shall have the right to make such deductions from a MEMBER'S MINIMUM INDIVIDUAL RESERVE as are permitted in terms of Section 37D(1)(d) of the ACT and, notwithstanding any other provisions of the RULES, any benefit which becomes payable in terms of the RULES shall be adjusted in such a manner as may be determined by the ACTUARY to take into account the value of any amount previously deducted from a MEMBER'S MINIMUM INDIVIDUAL RESERVE in terms of this Rule, including any costs incurred by the FUND in giving effect to the provisions of this RULE.

# 16. MANAGEMENT OF THE FUND

## 16.1 BOARD OF TRUSTEES

16.1.1 The operation of the FUND shall be overseen and controlled, subject to the provisions of the ACT, by the BOARD OF TRUSTEES. The BOARD OF TRUSTEES shall consist of twelve TRUSTEES, of whom six shall be APPOINTED TRUSTEES and six shall be ELECTED TRUSTEES.

16.1.2 The members of the BOARD OF TRUSTEES appointed or elected in terms of these RULES shall not be entitled to any remuneration for their services as such, provided that they shall be reimbursed for any expenditure incurred in connection with the performance of their duties as determined by the BOARD OF TRUSTEES from time to time.

16.1.3 The BOARD OF TRUSTEES shall have the power in the name of the FUND to enter into and sign any contracts or documents and to institute, conduct, defend, compound or abandon any legal proceedings by or against the FUND, or to acquire, hold and alienate property, movable and immovable. The BOARD OF TRUSTEES shall also have power in the name of the FUND to make, amend and rescind policies in respect of any matter concerning the FUND, provided that any such policy shall not conflict with the RULES, and to take, generally, such steps as are, in its discretion, conducive to the attainment of the operation of the FUND.

## 16.2 APPOINTED TRUSTEE

16.2.1 Each APPOINTED TRUSTEE shall be appointed to the BOARD OF TRUSTEES by the EMPLOYER. Unless the circumstances envisaged in Rule 16.2.2 and Rule 16.2.3 apply, the term of office of an APPOINTED TRUSTEE shall be three years.

16.2.2 The EMPLOYER shall have the right to remove any APPOINTED TRUSTEE from office at any time and to appoint a new APPOINTED TRUSTEE to the BOARD OF TRUSTEES.

16.2.3 An APPOINTED TRUSTEE shall cease to hold office:

(a) if he has failed to attend three consecutive meetings of the BOARD OF TRUSTEES without reasonable cause, of which the BOARD OF TRUSTEES shall be the sole judge;

(b) unless there are extenuating circumstances which are acceptable to the BOARD OF TRUSTEES, if in the course of any one FINANCIAL YEAR he has attended less than 50% of duly constituted meetings of the BOARD OF TRUSTEES ; or

(c) on giving written notice to the EMPLOYER.

16.2.4 If the EMPLOYER is unable or unwilling to make an appointment as envisaged in Rule 16.2.1 and Rule 16.2.2, this function shall devolve upon the auditor.

## 16.3 ELECTED TRUSTEE

16.3.1 Each ELECTED TRUSTEE shall be elected by ballot, subject to the provisions of Rule 16.3.3. Elections for ELECTED TRUSTEES shall be held every three years, at a time determined by the BOARD OF TRUSTEES, but not more than four months, nor less than one month before the ANNUAL GENERAL MEETING in the applicable year; provided that in the event of a significant change or shift in the underlying structure or composition of membership of the FUND, the BOARD OF TRUSTEES may direct that an extraordinary election be held on such date as the BOARD OF TRUSTEES may determine.

16.3.2 The election of ELECTED TRUSTEES shall be conducted in the following manner:

(a) for each election, a returning officer and two scrutineers shall be appointed by the BOARD OF TRUSTEES;

(b) at least 30 days before the date of the first day of the election, the returning officer shall cause notices to be distributed direct to the ELIGIBLE VOTERS giving notice of the election, stating the number of ELECTED TRUSTEES to be elected, and calling for nominations for candidates to be sent to the returning officer on nomination forms conforming to the provisions of paragraph (c) below so as to be received by the returning officer on or before a nomination date fixed by the returning officer, which shall not be less than 16 days before the date of the first day of the election; and

(c) every nomination form shall be signed by a proposer and a seconder who shall be an ELIGIBLE VOTER (or on behalf of the BOARD OF TRUSTEES in terms of Rule 16.3.3) and shall contain the full name of the nominee and an undertaking signed by the nominee that he will serve on the BOARD OF TRUSTEES if elected or deemed to be elected as an ELECTED TRUSTEE.

16.3.3 If there are insufficient nominations for ELECTED TRUSTEES to fill the vacancies, the BOARD OF TRUSTEES shall make such nominations as are required to bring the number of ELECTED TRUSTEES nominated to six.

16.3.4 If only sufficient nominations for ELECTED TRUSTEES are made to fill the vacancies, those nominated shall be deemed to have been elected and there shall be no ballot.

16.3.5 A ballot paper shall contain:

(a) the full name of every candidate duly nominated;

(b) the date of the first day of the election;

(c) short instructions as to the manner in which the ballot paper is to be completed and submitted; and

(d) notification that the ballot paper must be returned by post, electronically or using such other means as determined by the BOARD OF TRUSTEES within 30 days after the date of the first day of the election.

16.3.6 Every ELIGIBLE VOTER shall be entitled to vote, and may vote only for not more candidates than the number of vacancies among the ELECTED TRUSTEES.

16.3.7 A ballot paper shall be valid only if completed by the ELIGIBLE VOTER by his placing a cross opposite the name of each candidate for whom he votes and received by the returning officer within 30 days after the date of the first day of the election. It is further provided that:

(a) the ballot papers shall be opened, examined and counted in the presence of the returning officer and scrutineers;

(b) if there is any doubt about the validity of any ballot paper, it shall be referred to the returning officer, who shall decide whether it is valid or not; and

(c) when the counting has been completed, the returning officer and scrutineers shall certify in writing the number of votes cast for each candidate.

16.3.8 The returning officer shall prepare a list of candidates in which list he shall record the number of votes for each candidate in the order of the number of votes received, the highest first, and if two or more candidates have received the same number of votes, the order in which they are placed shall be determined by lot. The returning officer shall declare these candidates duly elected as the ELECTED TRUSTEES.

16.3.9 Deleted.

16.3.10 The returning officer shall notify the ELECTED TRUSTEES who have been elected of their election and circulate notices of the result of the election to MEMBERS and beneficiaries.

16.3.11 Subject to the provisions of Rule 16.3.1, an ELECTED TRUSTEE shall hold office from the end of the ANNUAL GENERAL MEETING immediately following his election until the end of the third ANNUAL GENERAL MEETING after his election and shall, subject to the provisions of these RULES, be eligible for re-election.

16.3.12 An ELECTED TRUSTEE shall cease to hold office:

(a) if he has failed to attend three consecutive meetings of the BOARD OF TRUSTEES without reasonable cause, of which the BOARD OF TRUSTEES shall be the sole judge;

(b) unless there are extenuating circumstances which are acceptable to the BOARD OF TRUSTEES, if in the course of any one FINANCIAL YEAR he has attended less than 50% of duly constituted meetings of the BOARD OF TRUSTEES;

(c) in the case of an ACTIVE MEMBER on termination of SERVICE with the EMPLOYER, unless he becomes a PENSIONER or a DEFERRED PENSIONER;

(d) on giving written notice to the BOARD OF TRUSTEES.

16.3.13 If any ELECTED TRUSTEE ceases to be an ELECTED TRUSTEE otherwise than by expiry of his term of office, the vacancy shall be filled by the candidate who, at the last election held in terms of Rule 16.3.1, received the highest number of votes after the candidates who were elected to office as ELECTED TRUSTEES; provided that if no such candidate is available to fill the vacancy, the BOARD OF TRUSTEES shall nominate a candidate to become an ELECTED TRUSTEE to fill the vacancy. Such ELECTED TRUSTEE shall remain in office until the end of the ANNUAL GENERAL MEETING immediately following the next election, when his term of office shall expire.

## 16.4 Disqualification from holding office as TRUSTEE

No person in any of the following categories shall be eligible for appointment as a member of the BOARD OF TRUSTEES and if a TRUSTEE at any time falls into any such category he shall cease to hold office:

(a) any person who is insane or otherwise permanently incapable of acting;
(b) any person who is disqualified from being a director in terms of an order under the Companies Act, 1973;
(c) an unrehabilitated insolvent;
(d) any person removed from an office of trust on account of misconduct;
(e) any person who has been convicted of any offence and sentenced to imprisonment without the option of a fine; or
(f) any person who has been convicted of theft, fraud, forgery or uttering a forged document or perjury,

provided further that a TRUSTEE shall cease to hold office:

(i) from such date as the BOARD OF TRUSTEES may determine in the case of a breach of the provisions of Rule 16.5.7; and
(ii) from such date as the BOARD OF TRUSTEES may determine if Rule 16.5.9 applies.

## 16.5 Meetings of the BOARD OF TRUSTEES

16.5.1 The BOARD of TRUSTEES shall meet at least four times each year to conduct the business of the FUND. Seven TRUSTEES, of whom at least three are APPOINTED TRUSTEES and at least three are ELECTED TRUSTEES shall form a quorum.

16.5.2 Minutes of all meetings must be kept and at least 15 days' notice of each ordinary meeting shall be given to each TRUSTEE, provided that at the discretion of the BOARD OF TRUSTEES this notice period may be waived or reduced.

16.5.3 The BOARD OF TRUSTEES shall elect annually, at the first meeting following the ANNUAL GENERAL MEETING, a Chairman and a Vice-Chairman from its number, one of whom shall be an APPOINTED TRUSTEE and the other shall be an ELECTED TRUSTEE. The office of Chairman and Vice-Chairman shall rotate each year between APPOINTED TRUSTEES and ELECTED TRUSTEES, unless unanimously decided otherwise by the full BOARD OF TRUSTEES in any given year. The Chairman, or the Vice-Chairman in the absence of the Chairman, shall preside at every meeting of the BOARD OF TRUSTEES.

In the absence of the Chairman and the Vice-Chairman from any meeting, the TRUSTEES present shall elect a Chairman for that meeting from their own number and that Chairman shall for that meeting have all the powers and authority of the Chairman.

16.5.4 At all meetings of the BOARD OF TRUSTEES, each TRUSTEE shall be entitled to one vote. Voting shall be by show of hands unless a ballot is requested by a TRUSTEE. The decision of the majority shall be binding, and if the votes are equal the matter shall be referred to the next meeting of the BOARD OF TRUSTEES. If the votes remain equal at that meeting, the matter shall be referred to a person qualified in the matter under dispute for a recommendation. If the matter cannot be settled based on this recommendation, the matter shall be referred to an arbitrator agreed by the BOARD OF TRUSTEES and the arbitrator's decision on the matter shall be final. It is specifically provided that if the BOARD OF TRUSTEES cannot agree on a suitably qualified person to provide a recommendation on the matter under dispute, or on who should act as arbitrator, the professional association under whose jurisdiction the matter would be best suited would be requested to assist with the appointment of such person.

16.5.5 In deciding any question of fact the BOARD OF TRUSTEES may, save as is otherwise provided in these RULES, act upon such evidence as it may deem adequate, whether amounting to legal proof or not.

16.5.6 A resolution signed in writing by seven TRUSTEES, of whom at least three shall be APPOINTED TRUSTEES and at least three shall be ELECTED TRUSTEES shall be of the same force and effect as a resolution passed at a meeting of the BOARD of TRUSTEES.

16.5.7 If any TRUSTEE has directly or indirectly any pecuniary interest in a matter before any meeting of the BOARD OF TRUSTEES he shall not be present at or take part in the discussion of or vote upon such matter, provided that he shall be permitted to be present at and take part in the discussion (but not to vote) if he has disclosed to the BOARD OF TRUSTEES the existence and extent of any such interest, and provided further that no more than one quarter of the TRUSTEES present object to his presence or participation. It is specifically provided that TRUSTEES permitted to be present and to take part in the discussion in terms of this Rule shall be included in those counted for the purpose of deciding whether a quorum is present.

16.5.8 For the purpose of Rule 16.5.7, the following shall not constitute a pecuniary interest, whether the interest of the TRUSTEE therein is direct or indirect:

(a) an interest in common with others as a MEMBER of the FUND;

(b) the holding of an investment in, any account with, or liability as mortgagor or potential mortgagor, or being actually or potentially indebted on overdraft to a bank or like institution;

(c) the holding of, or being interested in or being the life assured under any policy of insurance with a REGISTERED INSURER; or

(d) the holding of not more than 5% of the shares or stock of any company or body corporate.

16.5.9 In order to further good governance, the BOARD OF TRUSTEES shall annually adopt a Code of Conduct, setting out the duties and obligations of the BOARD OF TRUSTEES, having regard to the provisions of Section 7C (2) of the ACT, and a policy regulating the acceptance of gifts and hospitality.

The Code of Conduct shall be enforced by sanctions contained in the Code as agreed to by the BOARD OF TRUSTEES.

16.5.10 The Chairman shall, on a requisition signed by not less than five TRUSTEES, call a special meeting of the BOARD OF TRUSTEES for the business detailed in such requisition.

16.5.11 An ANNUAL GENERAL MEETING shall be held before 30 June each year. At least 21 days' notice of the meeting must be given to each member of the BOARD OF TRUSTEES and to each ACTIVE MEMBER, PENSIONER and DEFFERED PENSIONER.

16.6 **Other Appointments**

16.6.1 The BOARD OF TRUSTEES shall appoint an ACTUARY in terms of Section 9A of the ACT, and an auditor in terms of Section 9 of the ACT and may withdraw any such appointment and make another appointment in its place at any time.

16.6.2 The BOARD OF TRUSTEES shall appoint a PRINCIPAL OFFICER in terms of Section 8 of the ACT on such terms as it may determine and may withdraw any such appointment and make another appointment in its place at any time.

If the PRINCIPAL OFFICER is absent from the REPUBLIC or is otherwise unable to perform his duties, the BOARD OF TRUSTEES shall in terms of Section 8 (2) of the ACT and within 30 days appoint another person on such terms as it may determine to act as PRINCIPAL OFFICER for the period of his absence or inability.

16.6.3 The PRINCIPAL OFFICER may be entitled to be compensated for his time spent on services to the FUND at such rates as may be determined from time to time by the BOARD OF TRUSTEES and subject to such terms and conditions as it may impose.

16.6.4 The BOARD OF TRUSTEES may appoint consultants on such terms as it may determine and may withdraw any such appointment at any time.

**16.7 Indemnification of Officers of the FUND**

16.7.1 The BOARD OF TRUSTEES and all other officers of the FUND shall be indemnified by the FUND against all proceedings, costs and expenses incurred by reason of any claim in connection with the FUND not arising from their negligence, dishonesty or fraud.

16.7.2 The BOARD OF TRUSTEES shall:

(a) insure the FUND at the FUND'S expense against loss resulting from dishonesty, negligence or fraud of any of its officers (including the BOARD OF TRUSTEES) having the receipt or charge of moneys belonging to the FUND; and

(b) ensure that any other party including the EMPLOYER has insurance protection against loss resulting from dishonesty or fraud of any other person having the receipt or charge of moneys belonging to the FUND.

**16.8 Sub-Committees**

The BOARD OF TRUSTEES may decide that any power of decision on any matter that is vested in it, over and above a matter referred to in Rule 17.1.6, shall be delegated, on such terms and conditions as it may specify, to a sub-committee, or sub-committees, of such of its members and such other persons (if any) as it may nominate. The decision of a sub-committee to which a power is so delegated shall, unless the BOARD OF TRUSTEES stipulate that the decision must be referred to it for ratification, be regarded as a decision of the BOARD OF TRUSTEES and the minutes of the sub-committee shall be recorded in the minutes at the next meeting of the BOARD OF TRUSTEES. It is specifically provided that the BOARD OF TRUSTEES shall retain full responsibility and liability for any decision made by a sub-committee to whom the BOARD OF TRUSTEES' power of decision making has been delegated in terms of this Rule.

# 17. FINANCIAL PROVISIONS

## 17.1 Investments and other Financial Powers of the Trustees.

17.1.1 All moneys received on account of the FUND shall be paid within 24 hours into a banking account opened in the name of the FUND.

17.1.2 The BOARD OF TRUSTEES, shall have full power, subject to the provisions of the ACT and the requirements of the AUTHORITY, to receive, administer and apply the moneys of the FUND and in its absolute discretion to lend, invest, put out at interest, place on deposit, make advances, or otherwise deal with the moneys of the FUND upon such security and in such manner as it may from time to time determine and to realise, vary, reinvest or otherwise deal with such securities and other investments as it from time to time determines.

17.1.3 The BOARD OF TRUSTEES shall have the power to effect policies of insurance with one or more REGISTERED INSURERS for the purposes of investing the FUND'S moneys in order to meet the cost of providing benefits in terms of these RULES.

17.1.4 The BOARD OF TRUSTEES may, subject to the requirements of the AUTHORITY, obtain an overdraft from a bank or borrow from the EMPLOYER or any other party, on such terms as it thinks fit, such sums as it approves for the purpose of completing any investment or meeting any temporary unforeseen cash shortage and for this purpose may give such security as it decides.

17.1.5 All title deeds and securities shall be registered in the name of the FUND or in the name of such nominee company acceptable to the AUTHORITY as the BOARD OF TRUSTEES may appoint.

The documents of title registered in the name of the FUND in connection with any investment or asset of the FUND shall be kept in safe custody at the registered office of the FUND or in a banking institution, as decided by the BOARD OF TRUSTEES. Any documents of title registered in the name of a nominee company in connection with any investment or asset of the FUND shall be kept in safe custody at the registered office of that company or in a banking institution, as decided by that company.

17.1.6 The powers of the BOARD OF TRUSTEES to make investments and to realise, vary, reinvest or otherwise deal with the securities concerned, may be delegated by the BOARD OF TRUSTEES, on such terms and conditions as it may specify, to

(a) a sub-committee of such of its members and/or other persons as it may nominate;

(b) a financial institution as defined in the Financial Institutions (Protection of Funds) Act, 2001; or

(c) a person licensed in terms of the Securities Services Act, 2004.

The BOARD OF TRUSTEES shall not be liable for the negligence, dishonesty or fraud of an institution referred to in (b) or a person referred to in (c), provided that the BOARD OF TRUSTEES has received written confirmation that the institution referred to in (b) or the person referred to in (c) have arranged insurance cover of an amount satisfactory to the BOARD OF TRUSTEES in respect of any liability which may be incurred by such person or institution in respect of the FUND'S investments.

**17.2 Expenses**

The expenses related to the management and administration of the FUND, including the cost of audits and actuarial investigations shall be borne by the FUND.

**17.3 Financial Statements**

The BOARD OF TRUSTEES shall cause full and true financial statements to be kept for the FUND, in accordance with the provisions of Section 15 of the ACT. The financial statements shall be made up as at the end of each FINANCIAL YEAR, shall be approved by the BOARD OF TRUSTEES, audited by the auditor and shall be submitted to the AUTHORITY in accordance with the provisions of Section 15 of the ACT. A copy of the financial statements shall be submitted to the EMPLOYER and shall be made available for inspection by any MEMBER and any other person having an interest in the FUND.

## 17.4 Actuarial Valuations

17.4.1 The financial condition of the FUND shall be investigated and reported on by the ACTUARY annually. Where such a report has been prepared by the ACTUARY for the purposes of Section 16 of the ACT, the BOARD OF TRUSTEES shall forward a copy of such report to the AUTHORITY and a copy to the EMPLOYER within twelve months of the close of the FINANCIAL YEAR.

17.4.2 If the valuation discloses that there is a deficit, the manner of funding the deficit shall, subject to the provisions of Rule 4, be considered by the BOARD OF TRUSTEES in consultation with the ACTUARY. The decision on how the deficit is to be funded shall be taken by the BOARD OF TRUSTEES on the advice of the ACTUARY in accordance with the provisions of Section 18 of the ACT, provided that:

(a) if there is a deficit in the PENSIONER ACCOUNT, no amount may be transferred from the ACTIVE MEMBER ACCOUNT in order to fund such deficit; and/or

(b) if there is a deficit in the ACTIVE MEMBER ACCOUNT, no amount may be transferred from the PENSIONER ACCOUNT in order to fund such deficit.

17.4.3 If a valuation as at the SURPLUS APPORTIONMENT DATE discloses that there is an actuarial surplus, the FUND shall comply with the provisions of the Section 15B of the ACT, provided that the BOARD OF TRUSTEES may arrange for a nil scheme to be submitted to the AUTHORITY.

17.4.4 If a valuation after the SURPLUS APPORTIONMENT DATE discloses an actuarial surplus, any such amount may be credited to the EMPLOYER SURPLUS ACCOUNT and/or the MEMBER SURPLUS ACCOUNT in such proportions as may be determined by the TRUSTEES, in terms of Section 15C of the Act. It is specifically provided that:

(a) if there is a surplus in the PENSIONER ACCOUNT, no amount may be transferred from such account to the ACTIVE MEMBER ACCOUNT to fund a deficit in that account; and/or

(b) if there is a surplus in the ACTIVE MEMBER ACCOUNT, no amount may be transferred from such account to the PENSIONER ACCOUNT to fund a deficit in that account.

(c) the amount required, as determined by the ACTUARY, to meet the expenses of the FUND relating to the membership of the PENSIONERS.

(d) the amount required, as determined by the ACTUARY, to meet the expenses of the FUND relating to the membership of active MEMBERS.

17.4.5 Notwithstanding any other provisions of this Rule, if the ACTUARY in his report certifies that there is a substantial surplus in the ACTIVE MEMBER ACCOUNT and no CONTRIBUTIONS in terms of Rule 4.1.2 are being made, the benefits shall be increased or the CONTRIBUTIONS reduced as the BOARD OF TRUSTEES, subject to the consent of the EMPLOYER and after taking into account the provisions of Rule 4, decides.

## 17.5 Risk Reserve Account

**17.5.1** The RISK RESERVE ACCOUNT shall be credited with such amount as may be determined by the ACTUARY in consultation with the BOARD OF TRUSTEES from time to time, having regard to the purpose of this account which is to make provision towards payments in respect of future death and ill-health retirement benefits.

**17.5.2** The amount standing to the credit of the RISK RESERVE ACCOUNT shall be credited or debited with such amounts as may be recommended by the ACTUARY from time to time and agreed to by the BOARD OF TRUSTEES.

## 17.6 Pensioner Account

17.6.1 The PENSIONER ACCOUNT shall be credited with:

(a) the amount recommended by the ACTUARY as at 1 January 2008 as the amount required to meet the liability of the FUND in respect of PENSIONS in payment from the FUND including such actuarial surplus attributable to the PENSIONERS as may be recommended by the ACTUARY;

(b) the value of the amount held by the FUND as at 1 January 2008 on the recommendation of the ACTUARY in order to pay PENSIONS and other benefits to DEFERRED PENSIONERS in terms of Rule 10.2;

(c) the value of the balance of the benefit payable to a retiring MEMBER in terms of Rule 5, or DEFERRED PENSIONER in terms of Rule 10.2, after any commutation in terms of Rule 8.1, including such portion of the solvency margin in the ACTIVE MEMBER ACCOUNT as may be decided on by the ACTUARY;

(d) the value of amounts needed to pay PENSIONS in terms of Rule 6.1.1 (b), Rule 6.1.1 (c) or Rule 6.1.1 (d);

(e) any contributions by the EMPLOYER in terms of Rule 4.2.2;

(f) any amounts transferred from the EMPLOYER SURPLUS ACCOUNT to improve the benefits payable to PENSIONERS.

(g) any amount transferred in terms of Rule 17.13.4.

17.6.2 The PENSIONER ACCOUNT shall be increased or decreased by the investment return earned by the portfolio in which the assets within this account are invested, including any investment income (received and accrued) less an allowance for any tax and, if applicable, part or all of the expenses (paid and accrued), together with capital appreciation, realized or unrealized.

17.6.3 The PENSIONER ACCOUNT shall be debited with:

(a) PENSIONS and other benefits payable to PENSIONERS in terms of these RULES;

(b) PENSIONS and other benefits, including the gratuity referred to in Rule 13.2, payable to and in respect of DEFERRED PENSIONERS in terms of Rule 10.2; and

(c) if applicable, amounts transferred from the FUND in respect of a PENSIONER in terms of Rule 12.2.

(d) the amount required, as determined by the ACTUARY, to meet the expenses of the FUND relating to the membership of the PENSIONERS.

(e) any amounts released as surplus as decided by the BOARD OF TRUSTEES on the advice of the ACTUARY, including any amounts allocated to the PENSIONER SURPLUS RESERVE ACCOUNT, EMPLOYER CONTRIBUTION RESERVE ACCOUNT and EMPLOYER SURPLUS ACCOUNT.

**17.7 Active Member Account**

17.7.1 The ACTIVE MEMBER ACCOUNT shall be credited with:

(a) the value of the amount recommended by the ACTUARY as at 1 January 2008 as the amount required to pay benefits to ACTIVE MEMBERS in terms of these RULES, including such actuarial surplus attributable to the ACTIVE MEMBERS as may be recommended by the ACTUARY; and

(b) CONTRIBUTIONS by ACTIVE MEMBERS in terms of Rule 4.1.1 and Rule 4.1.2 and by the EMPLOYER in terms of Rule 4.2.1 (a).

(b) any amounts transferred from the EMPLOYER SURPLUS ACCOUNT as decided by the BOARD OF TRUSTEES subject to the provisions of the ACT.

17.7.2 The ACTIVE MEMBER ACCOUNT shall be increased or decreased by the investment return earned by the portfolio in which the assets within this account are invested, including any investment income (received and accrued) less an allowance for any tax and, if applicable, part or all of the expenses (paid and accrued), together with capital appreciation, realised or unrealised.

17.7.3 The ACTIVE MEMBER ACCOUNT shall be debited with:

(a) benefits payable to and in respect of ACTIVE MEMBERS in terms of Rule 5, Rule 6.1.1, Rule 6.1.2, Rule 10.1 and Rule 13.2;

b) if applicable, any amounts transferred out of the FUND in respect of the MEMBER, in terms of Rule 12;

(c) transfers to the PENSIONER ACCOUNT in terms of Rule 17.6.1 (c) and

(d) the amount required, as determined by the ACTUARY, to meet the expenses of the FUND relating to the membership of active MEMBERS.

## 17.8 Employer Surplus Account

17.8.1 The EMPLOYER SURPLUS ACCOUNT shall be credited with any amounts allocated in terms of Section 15C of the ACT.

17.8.2 The amount standing to the credit of the EMPLOYER SURPLUS ACCOUNT shall be increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid and accrued), together
with capital appreciation, realized or unrealized.

17.8.3 The amount standing to the credit of the EMPLOYER SURPLUS ACCOUNT may be used in the manner and for any of the purposes set out in the ACT.

## 17.9 Member Surplus Account

17.9.1 The MEMBER SURPLUS ACCOUNT shall be credited with any amounts allocated in terms of Section 15C of the ACT.

17.9.2 The amount, if any, standing to the credit of the MEMBER SURPLUS ACCOUNT shall be increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid and accrued), together with capital appreciation, realized or unrealized.

17.9.3 The amount standing to the credit of the MEMBER SURPLUS ACCOUNT may be used in the manner and for any of the purposes set out in the ACT.

## 17.10 Contribution Stabilisation Reserve

17.10.1 The FUND shall maintain a CONTRIBUTION STABILISATION RESERVE, to which shall be allocated such amount, as determined by the TRUSTEES on the advice of the ACTUARY.

17.10.2 The amount in the CONTRIBUTION STABLISATION RESERVE shall be:

(a) increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid and accrued), together with capital appreciation, realised or unrealized; and

(b) credited or debited with such amounts as may be recommended by recommended by the ACTUARY from time to time and agreed to by the TRUSTEES.

17.10.3 The balance maintained in the CONTRIBUTION STABILISATION RESERVE shall be limited to what is affordable, having regard to the financial position of the FUND.

## 17.11 Solvency Reserve

17.11.1 The FUND shall maintain a SOLVENCY RESERVE which shall be equal to the amount required on the advice of the ACTUARY to stabilise the funding level to a level considered prudent by the ACTUARY.

17.11.2 The amount in the SOLVENCY RESERVE shall be credited or debited with such amounts as may be recommended by the ACTUARY from time to time and agreed to by the TRUSTEES.

17.11.3 The balance maintained in the SOLVENCY RESERVE shall be limited to what is affordable, having regard to the financial position of the FUND.

## 17.12 Pensioner Surplus Reserve Account

17.12.1 The FUND shall maintain a PENSIONER SURPLUS RESERVE ACCOUNT to hold the surplus assets of the FUND as at 1 January 2019 apportioned for the benefit of PENSIONERS in terms of Section 15C of the ACT, and from which any surplus awards made to the PENSIONERS may be debited.

17.12.2 The PENSIONER SURPLUS RESERVE ACCOUNT shall be credited with the surplus assets referred to in Rule 17.12.1 and any other amounts allocated to the PENSIONER SURPLUS RESERVE ACCOUNT in terms of Rule 17.6.3(e).

17.12.3 The amount in the PENSIONER SURPLUS RESERVE ACCOUNT shall be:

(a) increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid and accrued), together with capital appreciation, realised or unrealised; and

(b) debited with amounts used to improve the benefits of PENSIONERS in such manner as the BOARD OF TRUSTEES, after taking advice of the ACTUARY, may decide from time to time.

**17.13 Employer Contribution Reserve Account**

17.13.1 The FUND shall maintain an EMPLOYER CONTRIBUTION RESERVE ACCOUNT to hold the surplus assets of the FUND as at 1 January 2019 apportioned for the benefit of the EMPLOYER in terms of Section 15C of the ACT for the purpose of meeting part of the EMPLOYER'S ongoing CONTRIBUTIONS to the FUND, prior to these amounts being allocated to the EMPLOYER SURPLUS ACCOUNT.

17.13.2 The EMPLOYER CONTRIBUTION RESERVE ACCOUNT shall be credited with the surplus assets referred to in Rule 17.13.1 and any other amounts allocated to the EMPLOYER CONTRIBUTION RESERVE ACCOUNT in terms of Rule 17.6.3(e).

17.13.3 The amount in the EMPLOYER CONTRIBUTION RESERVE ACCOUNT shall be:

(a) increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid and accrued), together with capital appreciation, realised or unrealised; and

(b) debited with amounts transferred to the EMPLOYER SURPLUS ACCOUNT as decided by the BOARD OF TRUSTEES from time to time, after taking advice of the ACTUARY, to meet part of the EMPLOYER'S ongoing CONTRIBUTIONS to the FUND.

17.13.4 In the event of the termination of the FUND, any amount standing to the credit of the EMPLOYER CONTRIBUTION RESERVE ACCOUNT shall be transferred to the PENSIONER ACCOUNT.

## 18. ADMINISTRATION OF THE FUND

18.1 The BOARD OF TRUSTEES shall appoint an ADMINISTRATOR of the FUND for such periods and on such terms as it may determine and may withdraw any such appointment and make another appointment in its place at any time.

18.2 The FUND shall be administered by the ADMINISTRATOR acting on the instructions of the BOARD OF TRUSTEES.

18.3 The ADMINISTRATOR shall keep a complete record of all necessary particulars of the MEMBERS of the FUND and of all persons entitled to benefits and of all other matters essential to the operation of the FUND.

18.4 The ADMINISTRATOR shall keep full and true financial statements for the FUND as required in terms of Rule 17.3.

18.5 All cheques, contracts and other documents pertaining to the FUND shall be signed by such persons as the BOARD OF TRUSTEES by resolution may appoint, provided that documents to be deposited with the AUTHORITY shall be signed in the manner prescribed by Section 20 of the ACT.

18.6 The ADMINISTRATOR shall maintain fidelity cover to indemnify the FUND against any loss resulting from the dishonesty or fraud of any person in its employment.

## 19. AMENDMENTS TO THE RULES

19.1 The BOARD OF TRUSTEES may at any time amend the RULES, subject to:

(a) the consent of the EMPLOYER, if the EMPLOYER'S financial obligations to the FUND are affected; and

(b) the consent in writing of not less than two-thirds of the ELIGIBLE VOTERS voting within such period as is determined by the BOARD OF TRUSTEES, which shall not be less than thirty days;

provided that:

(i) the limitations in (b) above shall not apply to amendments required to ensure that the FUND will be able to meet its obligations in terms of a certificate issued by the ACTUARY or to amendments required to ensure the FUND complies with legislative requirements; and

(ii) that any amendment to the RULES affecting the financial basis of the FUND shall be referred to the ACTUARY for endorsement before being adopted.

19.2 All alterations to the RULES shall be submitted to the AUTHORITY and any other statutory authority who so requires.

19.3 Within six months after the end of the FINANCIAL YEAR the PRINCIPAL OFFICER shall notify the MEMBERS of all amendments to the RULES registered within the FINANCIAL YEAR.

19.4 If the registration of any amendment to these RULES in terms of the Section 12 (4) of the ACT is effected on a date after the effective date of the alteration, the amendment shall nevertheless take effect from the effective date as stated in the amendment.

19.5 If it is necessary in order to obtain continued registration under the ACT, the BOARD OF TRUSTEES may, subject to the consent of the EMPLOYER if the EMPLOYER'S financial obligations to the FUND are affected, amend the RULES.

## 20. INTERPRETATION OF RULES

20.1 The decision of the BOARD OF TRUSTEES as to the meaning of or interpretation of these RULES or of any particular Rule or part of a Rule shall be final and binding on the EMPLOYER, MEMBERS and every person claiming to be entitled to a benefit under these RULES, subject to the provisions of Section 30A of the ACT.

20.2 Any question which may arise with regard to a claim by any person under these RULES shall be decided by the BOARD OF TRUSTEES, subject to the provisions of Section 30A of the ACT.

20.3 If any person affected by a decision of the FUND in terms of Rules 20.1 or 20.2 is dissatisfied with the decision, he shall have the right to lodge a written complaint as envisaged in Section 30A of the ACT. If such person remains dissatisfied he may lodge his complaint with the Pension Funds Adjudicator appointed in terms of the ACT which shall be dealt with in accordance with Sections 30D to 30P of the ACT.

20.4 The BOARD OF TRUSTEES, the EMPLOYER (or one or more of their number), or any other person having a complaint or dispute of fact or law shall, notwithstanding anything to the contrary in these RULES, have the right to invoke the complaint procedures in accordance with Section 30A of the ACT.

## 21. MISCELLANEOUS PROVISIONS

21.1 (a) Subject to the payment of such fee as the BOARD OF TRUSTEES may require, a MEMBER shall be entitled on application to a copy of any of the documents referred to in Section 35(1) of the ACT.

(b) A MEMBER shall be entitled on application to inspect without charge a copy of any of the documents referred to in Section 35(2) of the ACT and to make extracts therefrom.

21.2 The EMPLOYER shall from time to time furnish to the BOARD OF TRUSTEES in respect of those employees who are ACTIVE MEMBERS all necessary particulars affecting their benefits or their entitlement thereto under the FUND and the BOARD OF TRUSTEES shall be entitled to act upon such particulars without further enquiry and shall not be responsible to any ACTIVE MEMBER or to the EMPLOYER or to any other person or body whatsoever for any mis-statements or errors or omissions which may be contained in such particulars.

21.3 Each MEMBER and other beneficiary shall produce a birth certificate or other evidence of age acceptable to the ADMINISTRATOR and shall also give such other information as the BOARD OF TRUSTEES may reasonably require for the purposes of the FUND.

21.4 (a) Payment of each benefit in terms of these RULES shall be made to the person entitled thereto by means of electronic transfer into the bank account of such person at a bank registered in terms of the Banks Act, 1990, as amended.

(b) Payment in terms of (a) above shall constitute full and final settlement of all claims to the benefit against the FUND and neither the FUND, the EMPLOYER nor the ADMINISTRATOR shall have any further liability for the benefit to any person.

(c) Each person entitled to a PENSION shall give notice in writing to the ADMINISTRATOR of any change in marital status, postal address and banking details.

21.5 Nothing in these RULES shall in any way restrict the right of the EMPLOYER to terminate the employment of any ACTIVE MEMBER.

21.6 The ADMINISTRATORS shall maintain a separate record in respect of unclaimed benefits. Subject to the provisions of the ACT any such benefit shall be dealt with in the manner set out below:

(a) if a potential beneficiary approaches the FUND at any stage the BOARD OF TRUSTEES shall consider his claim and if the circumstances so warrant, shall pay to the beneficiary that part of the benefit, increased by such interest as they may allow, that as at the date of payment to the beneficiary is in excess of any costs incurred by the Fund in the administration of such benefit and any amount referred to in Rule 21.10;
or

(b) if so decided by the BOARD OF TRUSTEES, that part of the benefit, increased by such interest as they may allow, that as at the date of transfer in terms of this RULE is in excess of any costs incurred by the Fund in the administration of such benefit and any amount referred to in Rule 21.10 may be transferred to a national fund established by legislation for the purpose of housing unclaimed benefits, or to a fund established by an administrator for the same purpose.

21.7 All benefits and rights to benefits in terms of these RULES shall be subject to the prohibitions as to reduction, cession, attachment, etc. contained in Sections 37A and 37B of the ACT.

21.8 No person shall have any claim in respect of benefits payable by the FUND either upon the FUND or against the EMPLOYER or any LOCAL AUTHORITY, except in accordance with these RULES.

21.9 Membership of the FUND shall be regarded as an acknowledgement by the MEMBER that he agrees that these RULES, including any alteration that may be adopted in accordance herewith, shall be binding upon himself and upon any person claiming to derive a benefit under the FUND by virtue of his membership of the FUND.

21.10 If any costs are incurred as a consequence of the FUND tracing any potential beneficiaries whose benefits due under the FUND are unclaimed such reasonable costs may be recovered from the benefits payable to such beneficiaries.

21.11 Notwithstanding any other provisions of these RULES, it is specifically provided that the benefit paid to an ACTIVE MEMBER or DEFERRED PENSIONER of the FUND prior to retirement shall, subject to the provisions of Section 14A(1)(b) of the ACT, not be less than his MINIMUM INDIVIDUAL RESERVE.

# Appendix A

## ACTIVE MEMBERS who were Members of the Durban Municipal Pension Fund

Notwithstanding the other provisions of these RULES, the following special conditions shall apply to an ACTIVE MEMBER who was a member of the Durban Municipal Pension Fund and became an ACTIVE MEMBER on 1 February 1995 in terms of Rule 1.1 and has remained an ACTIVE MEMBER since that date:

(a) his PENSIONABLE SERVICE before becoming an ACTIVE MEMBER shall not be as specified in the definition of "PENSIONABLE SERVICE" in Rule 2 but shall include the period immediately before becoming an ACTIVE MEMBER, if any, during which he was a member of the Durban Municipal Pension Fund; and

(b) his contributions to the Durban Municipal Pension Fund shall be deemed to be CONTRIBUTIONS by the MEMBER to the FUND in terms of Rule 4.1, paid over the period that they were paid to Durban Municipal Pension Fund.

# Appendix B

## ACTIVE MEMBERS who were Members of the Durban Corporation Superannuation Fund

Notwithstanding any other provisions of these RULES, the following special conditions shall apply to an ACTIVE MEMBER who was a MEMBER of the Durban Corporation Superannuation Fund and became an ACTIVE MEMBER of the FUND on 1 February 1995 in terms of Rule 1.1 and has remained an ACTIVE MEMBER since that date:

(a) his PENSIONABLE SERVICE before becoming an ACTIVE MEMBER shall not be as specified in the definition of "PENSIONABLE SERVICE" in Rule 2 but shall include the period immediately before becoming an ACTIVE MEMBER which was recognised as PENSIONABLE SERVICE by the Durban Corporation Superannuation Fund;

(b) his contributions to the Durban Corporation Superannuation Fund shall be deemed to be CONTRIBUTIONS by the MEMBER to the FUND in terms of Rule 4.1 to the FUND, paid over the period that they were paid to the Durban Corporation Superannuation Fund;

(c) if he was a member of the Durban Corporation Superannuation Fund at 31 July 1974 then proviso (ii) in clause (c) of Rule 6.1.1 shall not apply;

(d) PENSIONABLE SERVICE purchased before 1 January 1989 in terms of the rules of the Durban Corporation Superannuation Fund shall not be included in an ACTIVE MEMBER'S PENSIONABLE SERVICE for the purposes of Rule 13.2; and

(e) the provisions of Rule 13.2 shall not apply to a DEFERRED PENSIONER who became a DEFERRED PENSIONER before 1 January 1989.