



# Rules of the OUTvest Pension Preservation Fund



## Preamble

1. The BOARD acknowledges that MEMBERS will opt to participate in the FUND on the basis that the FUND is sponsored by OUTvest and, in applying for membership, MEMBERS envisage an enduring sponsorship of the FUND by OUTvest.
2. The BOARD is responsible for the proper, effective and efficient governance of the FUND and must exercise the powers, perform the functions and carry out the duties assigned to it or imposed on it in terms of these RULES and in terms of law, including exercising a fiduciary duty towards the FUND and its MEMBERS.
3. The BOARD and the SPONSOR will work together towards the continued success of the FUND for the ultimate benefit of the MEMBERS of the FUND but all dealings between the FUND and the SPONSOR will be conducted in a manner that it ensures the independence of the BOARD is respected.

<b>1. Introduction</b>	<b>4</b>
1.1 Name	4
1.2 Objects	4
1.3 Legal status	4
1.4 Registered office	4
<b>2. Definitions and interpretation</b>	<b>4</b>
<b>3. Management of the FUND1</b>	<b>7</b>
3.1 Constitution of the BOARD	7
3.2 Chairperson	7
3.3 Appointment and removal of BOARD MEMBERS	7
3.4 Term of office of BOARD	8
3.5 Persons disqualified from being or acting as BOARD MEMBERS	8
3.6 Removal of BOARD MEMBERS and filling of vacancies	8
3.7 Payments to BOARD	8
3.8 Meetings of the BOARD	9
3.9 Round robin resolutions	9
3.10 Powers of the BOARD	9
3.11 Delegation of powers by the BOARD	10
3.12 Confidentiality of information	11
3.13 PRINCIPAL OFFICER	11
3.14 ACTUARY and actuarial valuations	11
3.15 Appointment of AUDITOR, annual audit and FUND'S financial year	12
3.16 Records and safe custody of securities	12
3.17 Disputes	12
3.18 Claims against the FUND	13
3.19 Indemnity and fidelity insurance	13
3.20 Documents	13
3.21 Registration and approval of FUND	13
<b>4. Membership</b>	<b>13</b>
4.1 Membership eligibility and admission	13
4.2 Termination of membership	14
<b>5. Contributions and financial provisions</b>	<b>14</b>
5.1 Member contributions	14
5.2 Application of CONTRIBUTIONS	14
5.3 Investment of the assets of the FUND	15
5.4 Expenses	16
5.5 Disinvestments of monies pending transfer or payment	16
5.6 ACCOUNTS	16
<b>6. Benefits</b>	<b>17</b>
6.1 Normal retirement	17
6.2 Ill-health early retirement	17
6.3 Notification of retirement age and retirement	17
6.4 Disinvestment of retirement benefit	17
6.5 Death benefits	18

6.6	Withdrawal benefits and translocation to another APPROVED FUND	18
6.7	Payment of benefits	18
6.8	Payment of death benefits	19
6.9	Disposition of benefits upon divorce	19
6.10	Benefits inalienable	20
6.11	Payment of an accrued BENEFIT other than a death benefit where the MEMBER dies prior to payment of the accrued BENEFIT	20
6.12	Payment of BENEFIT to a third party for the benefit of the MEMBER or BENEFICIARY	21
6.13	Unclaimed BENEFITS	21
<b>7.</b>	<b>Protected disclosures</b>	<b>21</b>
<b>8.</b>	<b>Personal information</b>	<b>21</b>
<b>9.</b>	<b>General provisions</b>	<b>22</b>
9.1	Currency	22
9.2	Monetary advantage	22
9.3	Right to obtain copies of or to inspect certain documents	22
9.4	Amendments to the RULES	22
9.5	Binding power of RULES	22
9.6	Role of the SPONSOR	22
<b>10.</b>	<b>Termination of the fund</b>	<b>23</b>



- 2.3.7 "APPROVED FUND" means a pension fund, pension preservation fund, provident fund, retirement annuity fund or provident preservation fund that has been registered in terms of the ACT and approved by the REVENUE SERVICE;
- 2.3.8 "AUDITOR" means an auditor registered under the Auditing Professions Act, 2005.
- 2.3.9 "AUTHORITY" means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulations Act, 2017.
- 2.3.10 "BENEFICIARY" means a nominee of a MEMBER or a DEPENDANT who is entitled to a BENEFIT as provided in the RULES;
- 2.3.11 "BENEFICIARY FUND" shall mean any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits that became payable in terms of the employment of a member on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds;
- 2.3.12 "BENEFITS" means the amounts payable to or in respect of a MEMBER in terms of Rule 6;
- 2.3.13 "BOARD" means the BOARD of the FUND constituted in terms of Rule 3;
- 2.3.14 "BOARD MEMBER" means a person who has been appointed to serve as a member of the BOARD in terms of Rule 3.3;
- 2.3.15 "COMMENCEMENT DATE" means, in respect of the FUND, the 27th of March 2020;
- 2.3.16 "CONTRIBUTIONS" means the amount transferred to the FUND, in terms of the RULES, from an APPROVED FUND where permissible under legislation;
- 2.3.17 "DEFAULT INVESTMENT PORTFOLIO" means an investment portfolio in which the retirement savings of a MEMBER will be invested unless the MEMBER has instructed the FUND in writing to invest them in another INVESTMENT PORTFOLIO which is provided in terms of the INVESTMENT POLICY STATEMENT of the FUND.
- 2.3.18 "DEPENDANT" in relation to a MEMBER means –
- 2.3.18.1 a person in respect of whom the MEMBER is legally liable for maintenance;
- 2.3.18.2 a person in respect of whom the MEMBER is not legally liable for maintenance, if such person –
- 2.3.18.2.1 was, in the opinion of the BOARD, upon the death of the MEMBER in fact dependent on the MEMBER for maintenance;
- 2.3.18.2.2 is the spouse of the MEMBER;
- 2.3.18.3 is a child of the MEMBER, including a posthumous child, an adopted child and a child born out of wedlock;
- 2.3.18.4 is a person the MEMBER would have become legally liable for maintenance, had the MEMBER not died;
- 2.3.19 "DEPUTY PRINCIPAL OFFICER" shall mean the person that may be appointed by the BOARD in terms of section 8 of the ACT, any directive issued by the AUTHORITY and the RULES, to assist the PRINCIPAL OFFICER and to act during the absence of the PRINCIPAL OFFICER;
- 2.3.20 "EXPENSE ACCOUNT" means the account as provided for in Rule 5.4;
- 2.3.21 "FORMER MEMBER" shall mean a person who has left the membership of the FUND, and to whom a BENEFIT has been paid;
- 2.3.22 "FSP" means a financial service provider registered in terms of the Financial Advisory and Intermediary Services Act, 2002;
- 2.3.23 "FINANCIAL ADVISOR" means an accredited representative mandated or employed by the SPONSOR or by a SPONSOR accredited or approved FSP to provide financial services in terms of the Financial Advisory and Intermediary Services Act 37 of 2002, to a MEMBER
- 2.3.24 "FINANCIAL YEAR END" means the last day of June each year starting 30 June 2021;
- 2.3.25 "FUND" means the OUTvest Pension Preservation Fund;
- 2.3.26 "INCOME TAX ACT" means the Income Tax Act, 1962 including any amendments effective from time to time;
- 2.3.27 "INDEPENDENT BOARD MEMBERS" means the BOARD MEMBERS who are not employed by nor have a financial interest in the SPONSOR;
- 2.3.28 "INITIAL BOARD MEMBERS" means the BOARD MEMBERS appointed by the SPONSOR prior to the registration of the FUND, provided that all provisions relating to the BOARD and BOARD MEMBERS shall apply to such INITIAL BOARD MEMBERS unless otherwise indicated by the context;
- 2.3.29 "INSURER" means an insurer registered in terms of the Long Term Insurance Act, 1998;

- 2.3.30 "INVESTMENT POLICY STATEMENT" means the document which sets out the investment strategy of the BOARD and the matters referred to in RULE 5.3 and any other RULE relating to investments from time to time;
- 2.3.31 "INVESTMENT PORTFOLIO" means an investment product managed by a FSP, which may or may not be unitised, or a collective investment scheme authorised to accept business in terms of the Collective Investment Schemes Control Act, 2002, or listed instruments on the Johannesburg Stock Exchange or policies of insurance or any other asset class permitted by the ACT, which the BOARD has decided to make available to MEMBERS in terms of Rule 5.3;
- 2.3.32 "INVESTMENT RETURN" shall mean –
- (a) Any income (received and accrued) less an allowance for any tax and, if applicable, part or all of any expenses (paid and accrued); and
  - (b) Any capital appreciation or depreciation (unrealised and realised).
- 2.3.33 "MEMBER" means a person who has been admitted to membership of the FUND in terms of the RULES, excluding a person who has received all the BENEFITS which are due to such MEMBER from the FUND and whose membership has thereafter been terminated in accordance with the RULES;
- 2.3.34 "MEMBER APPLICATION" means the application of a MEMBER to participate in the FUND, which shall include details regarding the MEMBER'S CONTRIBUTION and the RETIREMENT AGE selected by the MEMBER, the INVESTMENT PORTFOLIO or PORTFOLIOS selected by the MEMBER in terms of Rule 5.3 and any other information which may be required by the BOARD, the ADMINISTRATOR and/or any other service provider to the FUND from time to time;
- 2.3.35 "MEMBER'S SHARE" means the realisable value of the MEMBER'S CONTRIBUTIONS in terms of Rule 5.1, less any expense deduction in terms of Rule 5.4, accumulated with the INVESTMENT RETURN earned by the INVESTMENT PORTFOLIOS selected by the MEMBER in terms of Rule 5.3 or by the BOARD, less any expenses, taxes or levies, plus any adjustments required or permitted in terms of these RULES or the ACT; the MEMBER'S SHARE shall consist of a VESTED PORTION and a NON-VESTED PORTION, where applicable;
- 2.3.36 "NOMINEE" means a person, other than a DEPENDANT, who has been nominated in writing by a MEMBER as being entitled to receive all or part of the death benefits provided by the FUND in terms of Rule 6.5 and whose nomination has not been retracted by the MEMBER;
- 2.3.37 "PUBLISH" means the communication by means of the FUND'S WEBSITE of any information or notification that the FUND wishes to bring to the attention of a MEMBER.
- 2.3.38 "PRINCIPAL OFFICER" means the person appointed in terms of RULE 3.13 in accordance with Section 8 of the ACT;
- 2.3.39 "PROTECTED DISCLOSURE", in addition to the meaning of "protected disclosure" in section 1 of the PROTECTED DISCLOSURES ACT, a protected disclosure includes disclosure of information to the AUTHORITY in terms of section 9B of the ACT;
- 2.3.40 "PROTECTED DISCLOSURES ACT" means the Protected Disclosures Act, 2000;
- 2.3.41 "RETIREMENT AGE" means the age, advised to the BOARD by a MEMBER in the MEMBER APPLICATION or the amended age advised to the BOARD, from time to time, in an acceptable manner at which the MEMBER will become entitled to payment of an ANNUITY, provided that such age shall not be earlier than age 55 years, provided further that the MEMBER may, provided that reasonable notice is given to the BOARD, in writing, elect to extend his RETIREMENT AGE;
- 2.3.42 "RETIREMENT BENEFITS COUNSELLING" means a written explanation of the risks, costs and charges of:
- 2.3.42.1 Available INVESTMENT PORTFOLIOS;
  - 2.3.42.2 Terms of the FUND'S annuity strategy; and
  - 2.3.42.3 Terms and process by which the FUND handles paid-up benefits.
- 2.3.43 "RETIREMENT DATE" means the last day of the month in which a MEMBER attains his RETIREMENT AGE;
- 2.3.44 "REVENUE SERVICE" means the Commissioner for the South African Revenue Service as defined in the INCOME TAX ACT;
- 2.3.45 "RULES" means these RULES, including any amendments which may become effective from time to time;
- 2.3.46 "SPONSOR" means OUTvest (Pty) Limited, a FSP;
- 2.3.47 "UNCLAIMED BENEFIT" means an unclaimed benefit as defined in the ACT and as is applicable to the FUND.
- 2.3.48 "UNCLAIMED BENEFIT FUND" means a fund that is established for the receipt of unclaimed benefits contemplated in the definitions of a pension preservation fund and a provident preservation fund in section 1 of the INCOME TAX ACT.

- 2.3.49 "VESTED PORTION" means that portion of the MEMBER'S SHARE that may, in terms of legislation, be taken in cash as a lump sum on retirement and include:
- 2.3.49.1 for a MEMBER who was a member of a provident fund or provident preservation fund and was 55 years of age or older on 1 March 2021, the portion of the MEMBER'S SHARE relating to any contributions made to a provident fund or transferred to a provident preservation fund, prior to, on and after 1 March 2021 of which that person was a member on 1 March 2021;
  - 2.3.49.2 for a MEMBER who was a member of a provident fund or provident preservation fund and was is under age 55 on 1 March 2021, the portion of the MEMBER'S SHARE relating to any contributions made to a provident fund or transferred to a provident preservation fund prior to 1 March 2021; and
  - 2.3.49.3 any INVESTMENT RETURN on the above amounts.
- 2.3.50 "NON-VESTED PORTION" means the portion of the MEMBER'S SHARE which must, in terms of legislation, be annuitized at retirement and include:
- 2.3.50.1 for a MEMBER who was a member of a provident fund or provident preservation fund and was 55 years of age or older on 1 March 2021, the portion of the MEMBER'S SHARE relating to any contributions made after transfer from that former provident fund or provident preservation fund of which the MEMBER was a member on 1 March 2021;
  - 2.3.50.2 for a MEMBER who was a member of a provident fund or a provident preservation fund and was 55 years of age or older on 1 March 2021, the portion of the MEMBER'S SHARE relating to any contributions made to a provident fund or provident preservation fund on or after 1 March 2021;
  - 2.3.50.3 any MEMBER CONTRIBUTIONS transferred to the FUND from an APPROVED FUND and classified as a non-vested benefit by that former fund; and
  - 2.3.50.4 any INVESTMENT RETURN on the above amounts.
- 2.3.49 "WEBSITE" means a website, as defined in the Electronic Communications and Transactions Act 2002, set up by the FUND.
- 2.3.50 "WITHDRAWAL NOTIFICATION" means the notification received by the FUND relating to a MEMBER'S exit from the FUND, which,
- 2.3.50.1.1 if a retirement benefit as set out in RULE 6.1 or RULE 6.2 is payable, means the receipt of a retirement form properly signed by the MEMBER in the format as determined by the BOARD;
  - 2.3.50.1.2 if a withdrawal benefit as set out in RULE 6.6 is payable, means the receipt of a withdrawal form properly signed by the MEMBER in the format as determined by the BOARD; or
  - 2.3.50.1.3 if a death benefit as set out in RULE 6.5 is payable, means notification of the MEMBER'S death, together with the information required by the ADMINISTRATOR and all the information required by the FUND, included but not limited to the information required to request bank verification.

## 3. Management of the fund

### 3.1 Constitution of the BOARD

- 3.1.1 The management, control and administration of the FUND vest in a BOARD comprising of six BOARD MEMBERS, of whom at least three shall be an INDEPENDENT BOARD MEMBER.
- 3.1.2 The BOARD shall elect one of the BOARD MEMBERS who shall be an INDEPENDENT BOARD MEMBER as the Chairperson of the BOARD.

### 3.2 Chairperson

- 3.2.1 The Chairperson shall hold office for a period of 2 (two) years, unless otherwise decided by the BOARD.
- 3.2.2 The Chairperson may, on the expiry of his term, make himself available for re-election.
- 3.2.3 The Chairperson may be removed from such office in the event of a majority vote by the BOARD to this effect.

### 3.3 Appointment and removal of BOARD MEMBERS

- 3.3.1 The SPONSOR shall appoint the INITIAL BOARD MEMBERS and all subsequent BOARD MEMBERS in accordance with the constitution of the BOARD as set out in Rule 3.1 above.
- 3.3.2 The INITIAL BOARD MEMBERS shall, immediately upon appointment, apply for exemption from the requirement that MEMBERS have the right to elect at least 50% of the BOARD MEMBERS as permitted in terms of the provisions of section 7B(1)(b)(iv) of the ACT.

- 3.3.3 The SPONSOR may remove from office a BOARD MEMBER but not an INDEPENDENT BOARD MEMBER at any time and may appoint a new BOARD MEMBER which may be a new INDEPENDENT BOARD MEMBER to take his place. The INDEPENDENT BOARD MEMBER can be removed at the request of the SPONSOR, provided that seventy-five percent of the remaining BOARD MEMBERS vote in favour of the removal of the INDEPENDENT BOARD MEMBER.
- 3.3.4 The SPONSOR may appoint an alternate to any BOARD MEMBER should this be required.

#### **3.4 Term of office of BOARD**

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- 3.4.1 The INITIAL BOARD MEMBERS and all subsequent BOARD MEMBERS shall hold office for a period of five years and that a BOARD MEMBER whose term of office has expired may be re-appointed.
- 3.4.2 A BOARD MEMBER shall remain a BOARD MEMBER until –
- 3.4.2.1 the expiry of his or her term of office;
  - 3.4.2.2 s/he resigns by giving the Chairperson written notice to that effect;
  - 3.4.2.3 in the case of the Chairperson resigning, s/he gives the rest of the BOARD written notice to that effect;
  - 3.4.2.4 s/he ceases to hold office in terms of Rules 3.5 or 3.6.1; or
  - 3.4.2.5 s/he is removed from office in terms of Rule 3.3.3.

#### **3.5 Persons disqualified from being or acting as BOARD MEMBERS**

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- 3.5.1 A BOARD MEMBER shall cease to be a BOARD MEMBER if:
- 3.5.1.1 s/he becomes mentally or physically incapable of acting; or
  - 3.5.1.2 her estate is sequestrated or surrendered or assigned in favour of her creditors; or
  - 3.5.1.3 s/he is convicted by a competent court of theft, fraud, forgery or a similar offence; or
  - 3.5.1.4 s/he is discharged by a competent court from an office of trust on account of misconduct; or
  - 3.5.1.5 s/he is convicted by a competent court on any charge and sentenced to a prison term without the option of a fine in terms of other legislation; or
  - 3.5.1.6 s/he dies; or
  - 3.5.1.7 following a peer performance review, it is found that s/he does not meet the standard of competency determined by the BOARD; or
  - 3.5.1.8 s/he fails to attain and retain the level of skills and training as required by the AUTHORITY; or
  - 3.5.1.9 s/he breaches the provisions of the Code of Conduct adopted by the BOARD.

#### **3.6 Removal of BOARD MEMBERS and filling of vacancies**

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- 3.6.1 A BOARD MEMBER shall cease to hold office if –
- 3.6.1.1 at least seventy-five percent of the other BOARD MEMBERS resolve that s/he is to be removed from office because of a breach of his or her fiduciary duty towards the FUND or a breach of his or her duties to its MEMBERS and/or other BENEFICIARIES after having given his or her a fair hearing, conducted by the BOARD or a committee of the BOARD; or
  - 3.6.1.2 s/he has failed to attend two consecutive BOARD meetings without the prior approval of the Chairperson and without good cause shown.
- 3.6.2 A vacancy which arises as a result of a BOARD MEMBER ceasing to hold office during her term of office shall be filled in terms of Rules 3.3.3 or 3.3.4, as the case may be.
- 3.6.3 A vacancy on the BOARD shall in no instance invalidate any proceedings of the BOARD.

#### **3.7 Payments to BOARD**

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- 3.7.1 The BOARD MEMBERS may receive from the FUND a refund of the reasonable expenses incurred by them, if any, on behalf of the FUND in accordance with the policies set by the BOARD from time to time.
- 3.7.2 In addition an INDEPENDENT BOARD MEMBER may receive such payments for attending to FUND business as may be decided from time to time by the BOARD, in agreement with the SPONSOR provided that any such payments shall be market-related.
- 3.7.3 The payments referred to above shall be regarded as expenses within the meaning of Rule 5.4.

### 3.8 Meetings of the BOARD

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- 3.8.1 The BOARD shall meet from time to time as is necessary to conduct the business of the FUND but no less than two times every calendar year. The BOARD may meet in person, by way of video or telephone conference or any other means regarded as appropriate.
- 3.8.2 The Chairperson may convene a special meeting of the BOARD if the Chairperson regards it as necessary. The Chairperson shall also convene a special meeting within twenty-one days of being so requested by at least three of the BOARD MEMBERS.
- 3.8.3 Save as otherwise provided, the Chairperson shall cause at least fourteen days' notice to be given of every BOARD meeting, specifying the place, date and time of the meeting, as well as the general nature of the business to be transacted at the meeting.
- 3.8.4 Four BOARD MEMBERS, shall constitute a quorum of which 50% or more must be an INDEPENDENT BOARD MEMBER.
- 3.8.5 If a quorum is not present at the time determined for the start of the meeting, the meeting may be adjourned by the Chairperson for a period of at least seven working days. At the postponed meeting the quorum requirements as recorded in RULE 3.8.4 must be satisfied.
- 3.8.6 The meetings of the BOARD shall be chaired by the Chairperson. If the Chairperson is temporarily absent or, for any other reason, is unable to perform her functions as Chairperson, the remaining BOARD MEMBERS shall elect a person from among its number present to act as Chairperson during the absence or unavailability of the Chairperson. The Chairperson shall be responsible for the orderly conduct of the meetings and may suspend or exclude from a meeting any BOARD MEMBER who deliberately ignores the authority of the Chairperson or who interferes with the orderly functioning of the BOARD.
- 3.8.7 Minutes shall be kept of all meetings held by the BOARD, such minutes are to be distributed to the BOARD MEMBERS within a reasonable period before the next BOARD meeting. Any amendments to the minutes must be lodged with the Chairperson within a reasonable period prior to distribution. If no objections are received during the distribution period of the minutes, the minutes of the previous meeting will be proposed, seconded and signed by the Chairperson at the next BOARD meeting. Once the minutes of the previous meeting are signed by the Chairperson they shall constitute prima facie evidence of the business transacted at the meeting.
- 3.8.8 The BOARD shall seek consensus in all matters requiring a decision. Should the BOARD fail to reach consensus on any issue, a decision will be taken by a simple majority of votes of BOARD MEMBERS present at any meeting, each BOARD MEMBER having one vote.
- 3.8.9 If the members of the BOARD are unable to reach a decision on any material issue -
- 3.8.9.1 the issue must be reconsidered by the BOARD at a meeting within ten working days of the date on which deadlock was reached and the majority of BOARD members present at that meeting must vote in favour of the decision; or
- 3.8.9.2 if a majority vote cannot be reached on a specific matter that requires a resolution, the matter will be resolved in terms of the dispute resolution process adopted by the BOARD from time to time. If after all the steps in the dispute resolution process have been followed, and a majority vote still cannot be reached, the Chairperson will exercise a casting vote.

### 3.9 Round robin resolutions

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- 3.9.1 Written resolutions other than in 3.9.2 below:
- A resolution in writing sent to all the members of the BOARD shall, provided that the number of individually signed copies amount to the number required for a quorum, be valid and effective as if it was passed at a meeting of the BOARD duly convened and held.
- 3.9.2 Electronic resolutions
- A resolution circulated to all the members of the BOARD via e-mail shall, provided that the number of the BOARD members, who signify their approval by return of e-mail is no less than the number required for a quorum, be valid and effective as if it was passed at a meeting of the BOARD duly convened and held.

### 3.10 Powers of the BOARD

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- 3.10.1 The BOARD shall, subject to the RULES, have all such powers as may be exercised by the FUND in terms of these RULES and any powers specifically granted to the BOARD in the RULES, provided that such specific powers shall not in any way be construed as derogating from the general powers of the FUND.

- 3.10.2 The assets of the FUND shall consist of balances in the FUND bank account/s and claims against an INSURER and/or any collective investment schemes and/or any other asset classes permitted by the ACT which the BOARD have made available to MEMBERS as INVESTMENT PORTFOLIOS.
- 3.10.3 The BOARD shall have full power, subject to the provisions of the ACT and the requirements of the AUTHORITY, to receive, administer and apply the monies of the FUND and in their absolute discretion to invest, put out at interest, place on deposit, make advances, or otherwise deal with the monies of the FUND upon such security and in such manner as they may determine from time to time and to realise, vary, reinvest or otherwise deal with such securities and other investments as they may determine.
- 3.10.4 To act on behalf of the FUND in all negotiations with the ADMINISTRATOR and/or collective investment schemes and/or other service providers regarding the investment policies or contracts.
- 3.10.5 To contract on behalf of the FUND and to sign such contract or other document on behalf of the FUND whether by way of physical, digital or electronic signature, to institute legal action or process for the FUND and to conduct, settle or abandon such action or process, to defend or settle legal action or process instituted against the FUND. To make, amend and rescind policies and procedures in respect of any matter concerning the FUND, provided that such policies and procedures do not conflict with the RULES, the ACT and the INCOME TAX ACT.
- 3.10.6 To amend the RULES, subject to the provisions of RULE 9.4 and subject to the approval of the SPONSOR where the amendment affects the rights of the SPONSOR.
- 3.10.7 To establish an annuity strategy which will be recorded in the ANNUITY POLICY STRATEGY.
- 3.10.8 The BOARD shall be entitled, in its absolute discretion, to make any arrangements for the administration of the FUND and in this regard shall appoint and remunerate the ADMINISTRATOR. The BOARD shall ensure that the ADMINISTRATOR is registered in terms of section 13B of the ACT and shall enter into an administration agreement which complies with the applicable legislation.
- 3.10.9 The BOARD shall be entitled, in its absolute discretion, to appoint and remunerate consultants, investment advisers, legal representatives and other professionals to assist the BOARD in performing its duties and functions where it considers this necessary or prudent.
- 3.10.10 The BOARD may, in accordance with the provisions of section 14 of the ACT, amalgamate any business carried on by the FUND with any business carried on by any other person, or transfer any business carried on by the FUND to any other person, or accept transfer of any business from any other person to the FUND, provided that the BOARD shall provide that a written notice setting out full details of the proposed scheme be sent to every MEMBER who will be affected thereby, at least thirty days prior to submitting the scheme to the AUTHORITY.
- 3.10.11 The BOARD shall have the discretion and power to appoint a nominee company as contemplated in section 5 of the ACT.
- 3.10.12 The BOARD shall have the discretion and power to decide on and take steps that are conducive to attaining the objectives of the FUND.

### **3.11 Delegation of powers by the BOARD**

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- 3.11.1 The BOARD may delegate any of its powers and duties in terms of these RULES to another person or a committee of the BOARD, with the power to sub-delegate such power on such terms and conditions as it may think fit, including the power to sub-delegate.
- 3.11.2 These terms may include the purpose, powers, authorities and discretion of the sub-committee or the person or group of persons.
- 3.11.3 The BOARD may notwithstanding any delegation of its powers, continue to exercise the powers delegated.
- 3.11.4 The BOARD may terminate the delegation of its powers to any sub-committee or person or group of persons or may vary the terms of the appointment.
- 3.11.5 A sub-committee or a person acting under delegated powers is mutatis mutandis subject to the provisions of these RULES and the ACT.
- 3.11.6 A sub-committee may consist of any number of BOARD MEMBERS together with such other persons as the BOARD may appoint.
- 3.11.7 A decision taken by a sub-committee or a person or group of persons must be referred to the BOARD to be noted at the next meeting of the BOARD unless specifically decided otherwise by the BOARD. Failure to so note the decision shall however not affect the validity of the decision.
- 3.11.8 For the purpose of interpretation of the RULES, it shall be deemed that when a RULE empowers the BOARD it may delegate the power concerned in terms of RULE 3.11.1 above, unless the context clearly indicates otherwise.

3.11.9 The provisions of RULES 3.8.4 and 3.8.5 shall mutatis mutandis apply to a sub-committee of the BOARD, provided that:

3.11.9.1 A reference to “BOARD MEMBERS” shall be interpreted as “BOARD MEMBERS” belonging to a subcommittee;

3.11.9.2 The number required for a quorum shall be the number required for the quorum of the sub-committee as specified in the constitution of the sub-committee.

### **3.12 Confidentiality of information**

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The BOARD and all BOARD MEMBERS shall be entitled to only such information, including “personal information” as contemplated in RULE 8, from a MEMBER as the BOARD may require for the exercise of their duties in terms of the RULES. Such information including “personal information” as contemplated in RULE 8, shall be used only for the purpose of the BOARD performing its duties in terms of the RULES and shall not be disclosed to any person or body other than an office-bearer or employee of the FUND or ADMINISTRATOR, whose needs the information to perform their function, or other service provider to the FUND.

### **3.13 PRINCIPAL OFFICER**

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3.13.1 The BOARD shall appoint the PRINCIPAL OFFICER, and may, in consultation with the PRINCIPAL OFFICER, appoint a DEPUTY PRINCIPAL OFFICER, subject to approval by the AUTHORITY. Any such appointment may be changed by the BOARD in its sole discretion.

3.13.2 The BOARD shall notify the AUTHORITY, in writing, of the name of the PRINCIPAL OFFICER within thirty days of the COMMENCEMENT DATE and thereafter within thirty days of appointment of any subsequent PRINCIPAL OFFICER.

3.13.3 If the AUTHORITY objects to the appointment of the PRINCIPAL OFFICER in terms of the ACT the BOARD must terminate the appointment within 30 (thirty) days of the AUTHORITY informing the BOARD in terms of the ACT.

3.13.4 The PRINCIPAL OFFICER may decide that any power or decision on any matter that is vested in him shall be delegated, on such terms and conditions as he may specify from time to time, to the DEPUTY PRINCIPAL OFFICER where so appointed by the BOARD, provided that such delegation is consistent with the provisions of the ACT, any directive issued by the AUTHORITY and the RULES. The PRINCIPAL OFFICER shall retain full responsibility for any decision by a DEPUTY PRINCIPAL OFFICER to whom the PRINCIPAL OFFICER's decision making powers have been delegated in terms of this RULE.

3.13.5 If the BOARD has appointed a DEPUTY PRINCIPAL OFFICER, the DEPUTY PRINCIPAL OFFICER acts as PRINCIPAL OFFICER when the PRINCIPAL OFFICER is absent from the Republic of South Africa for a continuous period exceeding ten days or is unable for any reason to discharge any duty of the PRINCIPAL OFFICER in terms of the ACT, until the BOARD formally appoints a new PRINCIPAL OFFICER. In such an instance, the DEPUTY PRINCIPAL OFFICER must fulfil all the duties required of the PRINCIPAL OFFICER in terms of the ACT, these RULES and any directions given by the BOARD.

3.13.6 If the BOARD has not appointed a DEPUTY PRINCIPAL OFFICER, and the PRINCIPAL OFFICER is absent from the Republic of South Africa for a period exceeding ninety days or is otherwise unable to perform his duties, the BOARD shall appoint another person as PRINCIPAL OFFICER during the period of his absence or disability and shall advise the AUTHORITY accordingly.

3.13.7 The PRINCIPAL OFFICER shall perform all the functions required to fulfil his duties in terms of the ACT, the RULES and the directions of the BOARD.

3.13.8 The PRINCIPAL OFFICER or DEPUTY PRINCIPAL OFFICER of the FUND (where appointed) must attend all meetings of the BOARD but will not have a vote.

### **3.14 ACTUARY and actuarial valuations**

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3.14.1 The FUND shall within thirty days from the date of registration appoint an ACTUARY and shall within thirty days from the date of such appointment apply to the AUTHORITY for approval of such appointment, provided that the BOARD may make such appointment prior to registration of the FUND and may apply for such approval at the same time as applying for registration of the FUND.

3.14.2 Should the AUTHORITY refuse to approve the appointment of the ACTUARY or withdraw its prior approval of the appointment, the FUND must terminate the appointment of the ACTUARY within thirty days and shall appoint another ACTUARY, subject to the approval of the AUTHORITY.

3.14.3 The BOARD may rescind the appointment of the ACTUARY at any time and appoint another ACTUARY at the BOARD'S discretion.

- 3.14.4 The ACTUARY shall be the valuator of the FUND in terms of the ACT, unless the FUND has been exempted from compliance with the provisions of sections 9A and 16 of the ACT. The ACTUARY shall in addition to the function of valuator, perform such other functions as may be specified in the RULES or determined by the BOARD.
- 3.14.5 Unless the FUND has been exempted from compliance with the provisions of Sections 9A and 16 of the ACT the following shall apply;
- 3.14.5.1 the FUND shall be valued by the ACTUARY at intervals not exceeding three years;
- 3.14.5.2 within twelve months of the valuation date the ACTUARY shall submit a valuation report to the BOARD, who shall submit a copy thereof to the AUTHORITY including a certificate by the BOARD, the PRINCIPAL OFFICER and the ADMINISTRATOR that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the report was correct and complete in every material respect; and
- 3.14.5.3 a summary of the findings of the valuation report will be adequately communicated to the MEMBERS.
- 3.14.6 The BOARD shall maintain such records as may be required by the ACTUARY to perform the valuation function referred to above.
- 3.14.7 Should the FUND require exemption from the provisions of sections 9A and 16 of the ACT, the BOARD shall procure that the ACTUARY submits the relevant documentation as required by legislation at relevant time intervals.

### **3.15 Appointment of AUDITOR, annual audit and FUND'S financial year**

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- 3.15.1 The BOARD must appoint an AUDITOR as required by the ACT and apply to the AUTHORITY for approval of this appointment.
- 3.15.2 Once the AUTHORITY has confirmed the AUDITOR'S appointment, the AUDITOR will be responsible for auditing the FUND'S books and accounts at least once a year unless exempted.
- 3.15.3 Within six months after the FUND'S FINANCIAL YEAR END, or such other period as required by the AUTHORITY, the BOARD will submit the FUND'S financial statements for that financial year to the AUTHORITY as required in the ACT.
- 3.15.4 The FUND'S first financial year starts on 27 March 2020 and ends on 30 June 2021 and thereafter on 30 June of each year.

### **3.16 Records and safe custody of securities**

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- 3.16.1 The BOARD shall ensure that complete records are kept of all BENEFICIARIES and of matters essential to the efficient administration of the FUND.
- 3.16.2 All policies of insurance shall be issued in the name of the FUND and shall be held in safekeeping by the FUND.

### **3.17 Disputes**

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- 3.17.1 If a dispute arises between the FUND and a MEMBER or a BENEFICIARY in respect of the interpretation of the RULES, the administration of the FUND, the payment of any BENEFIT, a decision of the BOARD or any other related matter, the MEMBER or BENEFICIARY may lodge a written complaint with the PRINCIPAL OFFICER.
- 3.17.2 The complaint shall set out the basis for the dispute in writing;
- 3.17.3 A complaint so lodged shall be properly considered and replied to in writing 30 (thirty) days after the receipt thereof;
- 3.17.4 The PRINCIPAL OFFICER or his delegate shall in their sole discretion refer the dispute to –
- 3.17.4.1 the BOARD or an appropriate committee of the BOARD for consideration and decision; or
- 3.17.4.2 an appropriate officer or employee of the FUND.
- 3.17.5 If a dispute is referred to the BOARD, the BOARD shall deal with the dispute as it would with any other decision in terms of RULES 3.8.8 and 3.8.9.
- 3.17.6 If a dispute is referred to an employee or officer of the FUND, such employee or officer shall attempt to resolve the dispute and if unsuccessful, shall advise the Chairperson or his delegate. The PRINCIPAL OFFICER shall, unless the matter is resolved and subject to the provisions of the ACT, inform the MEMBER or BENEFICIARY in writing of the decision taken on behalf of the FUND in terms of this RULE.
- 3.17.7 If the MEMBER or BENEFICIARY is not satisfied with the decision referred to above or if the PRINCIPAL OFFICER fails to reply to the matter the MEMBER or BENEFICIARY may lodge the complaint with the ADJUDICATOR in terms of the ACT.

### 3.18 Claims against the Fund

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- 3.18.1 A MEMBER shall not have any claim against the FUND in respect of the bona fide investment of the assets of the FUND.
- 3.18.2 The risk and responsibility regarding the choice of investments will at all times remain that of the MEMBER. The FUND, the BOARD or the officers of the FUND will not in any way be liable for losses or damages suffered by a MEMBER or any other person in respect of any investment choice made by a MEMBER or any discretion exercised by the BOARD in terms of the RULES including with regard to the use of the DEFAULT INVESTMENT PORTFOLIO.
- 3.18.3 No person shall have any claim concerning the FUND either upon the FUND or against the BOARD, except in accordance with the RULES.

### 3.19 Indemnity and Fidelity Insurance

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- 3.19.1 The BOARD, officers of the FUND and persons to whom they have delegated their functions shall not be personally liable for decisions taken or actions authorized except if such decisions taken or actions constitute gross negligence, dishonesty, fraud or a breach of trust.
- 3.19.2 The BOARD shall safeguard the FUND against loss by insuring the FUND against loss due to the gross negligence, dishonesty or fraud of any of the officials of the FUND (including a BOARD MEMBER).

### 3.20 Documents

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The BOARD may authorise BOARD MEMBERS, or a person they deem fit, to approve and sign documents on behalf of the FUND, provided that documents to be deposited with the AUTHORITY shall be signed as prescribed in the ACT.

### 3.21 Registration and approval of FUND

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- 3.21.1 The BOARD shall apply for registration of the FUND in accordance with the provisions of the ACT and shall apply to the REVENUE SERVICE for the approval of the FUND as a pension preservation fund in terms of the INCOME TAX ACT.
- 3.21.2 The BOARD shall take the steps required by the REVENUE SERVICE for the continued approval of the FUND in terms of the INCOME TAX ACT.

## 4. Membership

### 4.1 Membership eligibility and admission

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- 4.1.1 The following persons are eligible for membership of the FUND:
  - 4.1.1.1 FORMER MEMBERS of an APPROVED FUND, where permissible, whose membership of that fund has terminated due to:
    - 4.1.1.1.1 resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to this FUND;
    - 4.1.1.1.2 the winding up of that fund, if the member elects or is required in terms of the rules to transfer to this FUND; or
    - 4.1.1.1.3 a transfer of business from one employer to another in terms of section 197 of the Labour Relations Act, 1995, and the employment of the employee with the transferor employer is transferred to the transferee employer, if the member elects or is required in terms of the rules to transfer to this FUND;
    - 4.1.1.1.4 if that fund was wound up or partially wound up; or
    - 4.1.1.1.5 if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule to the INCOME TAX ACT transferred to this FUND and who made this election while they were members of that other fund;
    - 4.1.1.1.6 a person who has elected in terms of section 37D(4)(b)(ii) of the ACT to have an amount awarded to that person in terms of a court order contemplated in section 7(8) of the Divorce Act, 1979 transferred from an APPROVED FUND, where permissible, for the benefit of that person.
    - 4.1.1.1.7 a person who has elected, while he was a member of another fund, to have a lump sum benefit, as contemplated in paragraph 2(1)(c) of the Second Schedule to the INCOME TAX ACT, transferred to this FUND;
- 4.1.2 The BOARD, or the ADMINISTRATOR in terms of a delegation from the BOARD, may approve the application and admit a person to participate in the FUND at its discretion.

- 4.1.3 On being admitted to participate in the FUND, the person shall become a MEMBER of the FUND with effect from the date on which the FUND receives the first CONTRIBUTION from the MEMBER.
- 4.1.4 A MEMBER must provide the FUND with information that the BOARD may reasonably require for the purposes of the FUND. This includes information required by the REVENUE SERVICE.
- 4.1.5 A MEMBER and any potential BENEFICIARY will be bound by the warranties, undertakings, agreements and other statements of the MEMBER contained in the MEMBERSHIP APPLICATION, and by any personal statement made by the MEMBER or potential BENEFICIARY to the FUND or ADMINISTRATOR.
- 4.1.6 A MEMBER and any potential BENEFICIARY will be bound by the ACT, the RULES and policies of the FUND adopted from time to time and any other documents as contemplated in the RULES and PUBLISHED on the WEBSITE.

## 4.2 Termination of membership

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- 4.2.1 Membership of the FUND will be terminated on the first occurring of the following:
  - 4.2.1.1 the MEMBER dies;
  - 4.2.1.2 the MEMBER retires;
  - 4.2.1.3 the MEMBER withdraws from the FUND; or
  - 4.2.1.4 an ANNUITY as contemplated in the RULES is purchased and the FUND has transferred such BENEFITS or portion thereof to the INSURER and, if applicable, has paid the remainder of such BENEFITS in cash to the MEMBER; or
  - 4.2.1.5 the FUND is dissolved.
- 4.2.2 On termination of membership of the FUND, following the payment or receipt of the MEMBER'S BENEFIT, as contemplated in the RULES, by the MEMBER and/or DEPENDANT as the case may be, such MEMBER and/or the DEPENDANT will thereafter have no further claim against the FUND.
- 4.2.3 When required by the BOARD, a MEMBER shall produce a birth certificate or other satisfactory evidence of her age and the age of her BENEFICIARIES and shall give the BOARD other information that the BOARD may require for the purposes of the FUND.
- 4.2.4 If a MEMBER fails to comply with RULE 4.2.3 the BOARD may withhold payment of any BENEFIT due to such MEMBER, or in respect of such MEMBER, until the provisions are complied with.
- 4.2.5 The FUND shall not be liable for any loss sustained by a MEMBER or BENEFICIARY arising from any misstatements or errors or omissions in the information supplied in terms of the RULES.

## 5. Contributions and financial provisions

### 5.1 Member contributions

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- 5.1.1 A MEMBER'S CONTRIBUTION consists of his or her total interest or part thereof transferred to the FUND from the former APPROVED FUND.
- 5.1.2 The BOARD may set a minimum CONTRIBUTION level from time to time.

### 5.2 Application of CONTRIBUTIONS

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- 5.2.1 CONTRIBUTIONS to the FUND shall be paid directly to the FUND and shall be collected from or deposited by the MEMBER or the former APPROVED FUND in accordance with the provisions of the MEMBER APPLICATION, into the bank account maintained by the FUND, the details of which will be conveyed to the MEMBER or the former APPROVED FUND on acceptance of membership to the FUND.
- 5.2.2 The interest earned in the bank account on the CONTRIBUTIONS received in terms of RULE 5.1 in respect of a MEMBER shall, notwithstanding the date of commencement of membership and the provisions of RULE 5.2.5, for the first day of deposit of each CONTRIBUTION in the bank account are to be allocated to the EXPENSE ACCOUNT. Thereafter, the CONTRIBUTION shall earn interest for the benefit of the MEMBER from the first day after the CONTRIBUTION was deposited at the rate of interest earned by the FUND in the bank account until transferred for purposes of investment in terms of RULE 5.3.
- 5.2.3 Interest earned by the FUND in the bank account which is not for the ultimate benefit of MEMBERS (as contemplated in RULE 5.2.2) shall accrue to the FUND and may be applied by the FUND, by way of crediting the amount to the EXPENSE ACCOUNT, to defray the expenses of the FUND.

- 5.2.4 After initial expenses contemplated in the RULES have been taken into account, the MEMBER'S net CONTRIBUTION, together with the interest, where applicable, shall be invested for the benefit of the MEMBER in accordance with RULE 5.3.
- 5.2.5 CONTRIBUTIONS deposited into the bank account by persons other than the ADMINISTRATOR shall be deemed not to have been received by the FUND until –
  - 5.2.5.1 the MEMBER (or applicant for membership) making the deposit or on whose behalf the deposit has been made has been identified by the ADMINISTRATOR;
  - 5.2.5.2 the ADMINISTRATOR has confirmed membership (or an application for membership) and receipt of a MEMBER APPLICATION in respect of the CONTRIBUTION; and
  - 5.2.5.3 where applicable, the requirements in terms of Section 14 of the ACT having not been met.
- 5.2.6 The FUND shall not be liable to any person for any loss or damages suffered arising out of or in connection with the non receipt by the FUND of a MEMBER APPLICATION or if the requirements in terms of Section 14 of the ACT have not been met, or the inability of the ADMINISTRATOR to reconcile a deposit and application form in respect of a MEMBER or applicant for membership.

### 5.3 Investment of the assets of the Fund

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- 5.3.1 The FUND must administer and invest the assets of the FUND in accordance with the INVESTMENT POLICY STATEMENT adopted by the BOARD from time to time.
- 5.3.2 In approving the INVESTMENT POLICY STATEMENT from time to time the BOARD must consider –
  - 5.3.2.1 what is in the best interests of the FUND and its MEMBERS;
  - 5.3.2.2 the investment objectives and appropriateness of each INVESTMENT PORTFOLIO; and
  - 5.3.2.3 the types of investments which the FUND is prepared to make and those which it is not prepared to make.
- 5.3.3 The BOARD shall make arrangements for the investment of the MEMBER'S SHARE, and any other assets of the FUND.
- 5.3.4 Depending on the investment structure of the FUND from time to time the MEMBER may select one or more INVESTMENT PORTFOLIOS, to which this MEMBER'S SHARE, including future CONTRIBUTIONS, should be allocated. All investment earnings on those amounts (whether positive or negative), net of any investment management fees and applicable taxes, will be allocated to the MEMBER'S SHARE. The BOARD shall set out guidelines for when selection or re-selection of the INVESTMENT PORTFOLIOS may take place and shall communicate this to the MEMBERS. These guidelines shall include requirements for the transfer of all or part of the MEMBER'S SHARE from one portfolio to another.
- 5.3.5 A MEMBER accepts the responsibility for the selection of his INVESTMENT PORTFOLIO and the periodic review thereof. The MEMBER has the sole responsibility for the selection of the INVESTMENT PORTFOLIO (except where the BOARD may make an election as provided for in the RULES) and the periodic review thereof. The FUND, the BOARD, the SPONSOR and the ADMINISTRATOR, or any of their agents and employees, will not be liable to the MEMBER (or any person claiming through the MEMBER) for the selection of the INVESTMENT PORTFOLIO, the variation thereof or the need for review thereof or the performance of the INVESTMENT PORTFOLIO or for any loss to the MEMBER occasioned by investment in the INVESTMENT PORTFOLIO.
- 5.3.6 In the event that a MEMBER does not make a selection in terms of RULE 5.3.4, the BOARD shall allocate the assets attributable to such MEMBER to a DEFAULT INVESTMENT PORTFOLIO selected by the BOARD. The BOARD may select the DEFAULT INVESTMENT PORTFOLIO in line with the provisions of the INVESTMENT POLICY STATEMENT.
- 5.3.7 The FUND is required to comply with the investment requirements of the Regulations to the ACT and Exchange Control legislation. The BOARD shall be entitled to put measures in place from time to time that they deem appropriate to ensure compliance in respect of the INVESTMENT PORTFOLIOS available to and selected by MEMBERS. These measures may include (but are not limited to) the setting of investment limits, the removal of an INVESTMENT PORTFOLIOS, requests to MEMBERS to switch from existing investment options to other investment options and, on failure of a MEMBER to give effect to the BOARD'S request to effect a switch, the switch by the BOARD of a MEMBER'S INVESTMENT PORTFOLIO (or part thereof) into an INVESTMENT PORTFOLIO selected by the BOARD. The FUND, the BOARD, the SPONSOR and the ADMINISTRATOR, or any of their agents and employees, will not be liable to the MEMBER (or any person claiming through the MEMBER) for any loss (whether of an income or capital nature) in respect of ensuring compliance with the legislation.
- 5.3.8 In deciding to make available a particular INVESTMENT PORTFOLIO, the BOARD must ensure that-
  - 5.3.8.1 the systems and processes of the manager of the INVESTMENT PORTFOLIO will provide sufficient information to enable the ADMINISTRATOR to maintain adequate financial records for the FUND;

- 5.3.8.2 the ADMINISTRATOR, or another body to which this function is delegated by the ADMINISTRATOR, sets a price from time to time in respect of any unitised INVESTMENT PORTFOLIO, which shall take into account the INVESTMENT RETURNS on the underlying assets and expenses such as any taxes, levies, fees and other costs related to the investment of those assets;
- 5.3.8.3 the performance of the INVESTMENT PORTFOLIO is published periodically in a format accessible to MEMBERS; and
- 5.3.8.4 information will be made available to MEMBERS on the INVESTMENT PORTFOLIO, whether electronically or otherwise, which can assist the MEMBERS to make an informed choice as to whether to select investment in that INVESTMENT PORTFOLIO.

#### **5.4 Expenses**

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- 5.4.1 Except where otherwise provided or agreed to between the BOARD and the SPONSOR or ADMINISTRATOR, the whole of the expenses in connection with or incidental to the management or administration of the FUND shall be paid by the ADMINISTRATOR on behalf of the FUND. It is specifically provided that the initial expenses of the FUND, including all costs, fees, taxes, levies and other expenses incurred by the FUND, shall be funded by the SPONSOR on behalf of the FUND until such time as the FUND is able to fund the expenses from a reduction of the MEMBER'S SHARE as provided in RULE 5.4.2. All expenses incurred by the FUND and to be funded by the SPONSOR in terms of this RULE, shall be subject to the approval of the SPONSOR. The repayment (if any) of expenses paid by the SPONSOR on behalf of the FUND shall be agreed between the SPONSOR and the BOARD on such terms as may be agreed in writing.
- 5.4.2 The FUND shall, in respect of each MEMBER, be entitled to reduce the MEMBER'S SHARE or make deductions from a MEMBER'S CONTRIBUTIONS, in order to fund the expensed related to the management and administration of the FUND, based on individual MEMBER's fee as provided for in the agreement referred to in RULE 3.10.8 or to cover any expenses relevant to a specific MEMBER as deemed equitable by the BOARD including any upfront or ongoing fees payable by the FUND on request of a MEMBER for any financial services provided by a FINANCIAL ADVISOR as agreed to by the MEMBER.
- 5.4.3 The ADMINISTRATOR shall act as agent for the FUND and be responsible for making payments to other service providers in respect of the expenses authorised by the BOARD.

#### **5.5 Disinvestments of monies pending transfer or payment**

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- 5.5.1 Notwithstanding anything to the contrary contained elsewhere in these RULES, in any of the circumstances set out in RULES 6.1, 6.2, 6.4, or 6.6, the ADMINISTRATOR shall, within a reasonable period from the date on which the ADMINISTRATOR is notified, by way of a withdrawal notification in the manner adopted by the BOARD from time to time, of a retirement, death, withdrawal, or transfer, or divorce, or within a reasonable time of the happening of the actual event, whichever is the later, arrange for the realisation of the value of the MEMBER'S SHARE and transfer of the resulting balance to a bank account in the name of the FUND or transfer of the assets or appropriate portion of the assets of the FUND, whichever is applicable, to the relevant funding arrangement.
- 5.5.2 For the purposes of RULE 6.5, the ADMINISTRATOR shall, within a reasonable period from the date on which the ADMINISTRATOR is notified, by way of a WITHDRAWAL NOTIFICATION in the manner adopted by the BOARD from time to time, of the death of the MEMBER, transfer the MEMBER'S SHARE to a money market account, approved by the BOARD, in terms of their INVESTMENT POLICY STATEMENT. Once the BOARD has made a final decision on the allocation of the death BENEFIT, the ADMINISTRATOR will arrange for the realisation of the value of the MEMBER'S SHARE and transfer of the resulting balance to a bank account in the name of the FUND or transfer of the assets or appropriate portion of the assets of the FUND, whichever is applicable, to the relevant funding arrangement.
- 5.5.3 Any reference to MEMBER'S SHARE, assets, appropriate share of the assets, or similar terminology in RULES 6.1, 6.2, 6.5, or 6.6 shall refer to that amount as at the date of transfer referred to in RULE 5.5.1 and 5.5.2.
- 5.5.4 Interest earned on the amount referred to in RULE 5.5.1 and 5.5.2 shall form part of the BENEFIT.

#### **5.6 ACCOUNTS**

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- 5.6.1 The FUND must keep such accounts as identified as being necessary for the operation of the FUND. The BOARD, at its discretion, after considering relevant advice may adopt such accounts as it deems necessary.
- 5.6.2 The BOARD may adopt a general policy or practice to govern any aspect of the business of the FUND, and, where the RULES require the BOARD to exercise its discretion, the BOARD may adopt guidelines, procedures or policies to facilitate a consistent approach to exercising that discretion but without fettering its discretion. Such guidelines, procedures and policies may be documented in policy statements or procedure notes. The BOARD must review and may change its policy statements and procedure notes from time to time. These include, amongst others, an income

and expense policy, the INVESTMENT POLICY STATEMENT, guidelines on the distribution of death benefits and a policy on mismatching and timing differences and amounts received or incurred as a result of normal operational activities. Where the policy statements or procedure notes are inconsistent with the RULES, the RULES will prevail.

## 6. Benefits

### 6.1 Normal Retirement

- 6.1.1 Subject to RULES 6.2 and 6.3 a MEMBER shall retire as at his RETIREMENT DATE. The MEMBER shall become entitled to an ANNUITY, as selected by the MEMBER, with the consent of the BOARD, which shall be purchased with the MEMBER'S SHARE. The MEMBER may elect to receive up to a maximum of the VESTED PORTION and one-third of the NON-VESTED PORTION of the MEMBER'S SHARE in cash. Where the NON-VESTED PORTION is less than the de minimus, as prescribed by legislation from time to time, the MEMBER may elect to receive the full NON-VESTED PORTION of the MEMBER'S SHARE in cash. Where the MEMBER elects to receive a cash amount, the cash amount less any tax payable, plus the ANNUITY, will become payable.
- 6.1.2 An ANNUITY which becomes payable in terms of RULE 6.1.1 shall be purchased in the MEMBER'S name from an INSURER.
- 6.1.3 Once the FUND has made payment to the INSURER and, if applicable, has paid any balance of the benefits to the MEMBER in cash the FUND will have no further obligation towards the MEMBER.
- 6.1.4 Each MEMBER hereby appoints the ADMINISTRATOR as his or her duly authorised agent to do all things necessary to procure the purchase of the ANNUITY.

### 6.2 Ill-health early retirement

- 6.2.1 Notwithstanding anything to the contrary contained elsewhere in these RULES, and subject to the provisions of RULES 6.2.2 and 6.3, if the BOARD is satisfied that a MEMBER has become permanently disabled through infirmity of mind or body, such MEMBER may become entitled to an early retirement BENEFIT from the FUND, whether or not he has attained the age of fifty-five years.
- 6.2.2 The MEMBER shall become entitled to an ANNUITY selected by the MEMBER, with the consent of the BOARD, which will be purchased with the MEMBER'S SHARE. The MEMBER may elect to receive up to a maximum of the VESTED PORTION and one-third of the NON-VESTED PORTION of the MEMBER'S SHARE in cash. Where the NON-VESTED PORTION is less than the de minimus, as prescribed by legislation, the MEMBER may elect to receive the full NON-VESTED PORTION of the MEMBER'S SHARE in cash. Where the MEMBER elects to receive a cash amount, the cash amount less any tax payable, plus the ANNUITY, will become payable
- 6.2.3 An ANNUITY which becomes payable in terms of Rule 6.2.2 shall be purchased in the MEMBER'S name from an INSURER.
- 6.2.4 Once the FUND has made payment to the INSURER and, if applicable, has paid any balance of the MEMBER'S SHARE to the MEMBER in cash, the FUND will have no further obligation towards the MEMBER.
- 6.2.5 Each MEMBER hereby appoints the ADMINISTRATOR as his or her duly authorised agent to do all things necessary to procure the purchase of the ANNUITY.

### 6.3 Notification of retirement age and retirement

- 6.3.1 A MEMBER shall provide the FUND with notification of his selected RETIREMENT AGE in his MEMBER APPLICATION, provided that the MEMBER may, subject to the consent of the BOARD, amend the RETIREMENT AGE from time to time by giving the FUND written notice to that effect. The FUND shall be entitled to deem the most recently notified age of retirement to be his RETIREMENT AGE.
- 6.3.2 A MEMBER is required to provide the FUND with notice of his intention to retire. The notice shall include the options elected by the MEMBER, in particular regarding payment of a lump sum BENEFIT of up to the regulated amount or portion of the MEMBER'S SHARE and the ANNUITY selected and any other information which may be required by the BOARD and the ADMINISTRATOR or any other service provider from time to time.

### 6.4 Disinvestment of retirement benefit

The FUND will start with the disinvestment process (as provided for under RULE 5.5) relating to the MEMBER'S SHARE as soon as reasonably possible after receiving the WITHDRAWAL NOTIFICATION which form shall be submitted electronically.

## 6.5 Death Benefits

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Upon the death of a MEMBER, there shall be payable a lump sum death BENEFIT equal to the MEMBER'S SHARE, less any applicable deductions. The aforementioned lump sum death BENEFIT shall be dealt with in terms of the provisions of RULE 6.8 and the provisions of RULE 5.5 shall apply to the MEMBER'S SHARE.

## 6.6 Withdrawal benefits and translocation to another APPROVED FUND

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- 6.6.1 A MEMBER shall, subject to clause 6.6.3 in respect of each and every transfer to the FUND have the right, before the MEMBER'S RETIREMENT DATE, to receive a once-off full or partial cash withdrawal benefit from the FUND. Such withdrawal benefit shall be subject to any restriction with regard to withdrawals in terms of the INCOME TAX ACT including any requirements of the REVENUE SERVICE and any restrictions advised by the transferring fund to the FUND in writing at the time the transfer took place. Such withdrawal shall not be regarded as a retirement, and the FUND shall pay to the MEMBER the value of the MEMBER'S SHARE in terms of the RULES.
- 6.6.2 A MEMBER may withdraw from the FUND at any date consented to by the BOARD and falling before his RETIREMENT DATE where:
- 6.6.2.1 that MEMBER emigrated from the Republic of South Africa and that emigration is recognised by the South African Reserve Bank for purposes of exchange control, as provided for in the INCOME TAX ACT; or
- 6.6.2.2 the MEMBER is a person who is not a resident of the Republic of South Africa for an uninterrupted period of three years or longer on or after 1 March 2021; or
- 6.6.2.3 the MEMBER departed from the Republic of South Africa at the expiry of a work visa or visitor's visa as contemplated in the Immigration Act of 2002, the FUND shall pay to the MEMBER the value of the MEMBER'S SHARE in terms of the RULES in cash.
- 6.6.3 If a MEMBER has already received a benefit from a former fund that is classified by the REVENUE SERVICE as a partial withdrawal, then the MEMBER will not have a right to receive a withdrawal benefit from the FUND.
- 6.6.4 The MEMBER may request the FUND in writing to transfer the MEMBER'S SHARE to another APPROVED FUND or multiple of APPROVED FUNDS capable of accepting such transfer. Subject to the provisions of RULE 5.5 and section 14 of the ACT, if applicable, the BOARD shall, within a reasonable period of receiving the MEMBER'S written request, transfer the MEMBER'S SHARE to that APPROVED FUND.

## 6.7 Payment of benefits

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- 6.7.1 The BOARD shall be entitled to request any documentation prescribed by it as satisfactory proof as to the identity and right of a BENEFICIARY to a BENEFIT before payment of a BENEFIT is made to such BENEFICIARY.
- 6.7.2 Whenever a BENEFIT is payable to a BENEFICIARY, the BENEFICIARY shall be deemed to have requested payment by means of an electronic bank transfer to his bank account, the details of which the BENEFICIARY shall inform the BOARD in writing.
- 6.7.3 Notwithstanding the provisions of the above, any amounts payable to either a MEMBER or a BENEFICIARY in terms of these RULES, may be paid to a third party if that MEMBER or BENEFICIARY provides sufficient proof, to the satisfaction of the BOARD, that he or she is not able to open a bank account.
- 6.7.4 A MEMBER who qualifies for a retirement benefit in terms of these RULES from the FUND must be given access to RETIREMENT BENEFITS COUNSELLING not less than 3 months prior to their normal RETIREMENT AGE.
- 6.7.5 A decision of the BOARD in terms of this RULE may be varied by the BOARD at its sole discretion.
- 6.7.6 A payment made in terms hereof shall not be made in a manner which conflicts with the provisions of the ACT or the requirements of the REVENUE SERVICE.
- 6.7.7 Upon a MEMBER or BENEFICIARY becoming entitled to an ANNUITY in terms of RULE 6 and upon the written instruction of the MEMBER or BENEFICIARY, the FUND shall purchase on behalf of the MEMBER or BENEFICIARY an ANNUITY as contemplated in the ANNUITY STRATEGY POLICY in the name of the MEMBER or BENEFICIARY, from an INSURER subject to the requirements of the INCOME TAX ACT. After the purchase of the ANNUITY and a payment of any cash portion, if applicable, the FUND shall have no further obligations to the MEMBER or BENEFICIARY.
- 6.7.8 If a MEMBER'S BENEFIT that is payable is lower than the minimum amount determined by the BOARD from time to time, the FUND may utilise that BENEFIT to cover the expense deductions contemplated in the RULES, which may arise between the time that the BENEFIT vests and the time that the BENEFIT is capable of payment, in respect of that MEMBER, whereupon the MEMBER'S membership of the FUND will come to an end. If the amount due is higher than the expense due, it will be paid to the MEMBER.

- 6.7.9 Where the MEMBER has not chosen an INSURER within such period as specified by the BOARD or where the MEMBER notifies the FUND that he wishes to purchase the default annuity as specified by the BOARD, the FUND shall purchase a pension from an INSURER selected by and on such basis as determined by the BOARD. It is expressly recorded that upon purchase of such pension, the MEMBER shall have no claim of whatsoever nature against the FUND, its service providers, the SPONSOR and the BOARD for payment of the pension or any other amount arising from the pension purchased and the choice made by the MEMBER in respect of the INSURER.
- 6.7.10 The ANNUITY so purchased constitutes a benefit payment from the FUND and must:
- 6.7.10.1 be in the name of the MEMBER;
  - 6.7.10.2 be compulsory, non-commutable and non-assignable;
  - 6.7.10.3 be payable at least for the lifetime of the MEMBER; and
  - 6.7.10.4 be in full and final settlement of the benefit due and payable to the MEMBER in terms of the RULES.

## 6.8 Payment of death benefits

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- 6.8.1 A MEMBER'S death BENEFIT will be paid in accordance with the ACT.
- 6.8.2 If the FUND within twelve months of the death of the MEMBER becomes aware of or traces a BENEFICIARY of the MEMBER, the BENEFIT shall be paid to such BENEFICIARY in such proportions as may be deemed equitable by the BOARD.
- 6.8.3 If the FUND does not become aware of or cannot trace any BENEFICIARIES within twelve months of the death of the MEMBER, the BENEFIT shall be paid into the estate of the MEMBER or, if no inventory in respect of the MEMBER has been received by the Master of the High Court in terms of the Administration of Estates Act (Act 66 of 1965), then it shall be paid either into the Guardian's Fund or into an UNCLAIMED BENEFIT FUND.
- 6.8.4 For the purposes of this RULE, a payment by the FUND for the benefit of a BENEFICIARY, shall be deemed to be a payment to such BENEFICIARY, if payment is made to-
- 6.8.4.1 a trust contemplated in the Trust Property Control Act (Act No 57 of 1988), nominated by –
    - 6.8.4.1.1 the MEMBER; or
    - 6.8.4.1.2 a BENEFICIARY who is 18 years and older, subject to RULE 6.8.4.1.3; or
    - 6.8.4.1.3 a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a BENEFICIARY who is younger than 18 years; or
    - 6.8.4.1.4 a BENEFICIARY, 18 years and older, who is not able to manage his or her affairs or meet his or her daily care needs; or
  - 6.8.4.2 a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a BENEFICIARY; or
  - 6.8.4.3 a BENEFICIARY FUND.
- 6.8.5 Any BENEFIT dealt with in terms of this RULE, payable to a minor BENEFICIARY, may be paid in more than one payment in such amounts as the BOARD may consider appropriate and in the best interest of such BENEFICIARY, provided that the BOARD shall determine the INVESTMENT PORTFOLIO in which the outstanding balance of the BENEFIT is invested and shall ensure that the appropriate returns are added to the outstanding balance at such times as the BOARD may determine, provided further that any balance owing to such a BENEFICIARY at the date on which he attains majority or dies, whichever occurs first, shall be paid in full.
- 6.8.6 Any BENEFIT dealt with in terms of this RULE, payable to a major BENEFICIARY, may be paid in more than one payment if the BENEFICIARY has consented thereto provided that:
- 6.8.7 the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement; and
- 6.8.8 the agreement may be cancelled by either party on written notice not exceeding ninety days.

## 6.9 Disposition of benefits upon divorce

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- 6.9.1 The FUND shall make those deductions as contemplated in the ACT and any directives issued by the AUTHORITY, including but not limited to the following:
- 6.9.1.1 In the event of the FUND being furnished with a valid court order issued in terms of the Divorce Act (Act No 70 of 1979) the FUND shall on the specific request of the person cited in the valid court order, transfer the amount awarded to the person cited in the valid court order to the person or other APPROVED FUND that the cited person may require or to endorse its records in respect of a specific MEMBER as required by the valid court order and that the BOARD shall give effect to such order; or

6.9.1.2 in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution.

6.9.2 Any deductions in terms of this RULE will be made proportionally from any VESTED PORTION and NON-VESTED PORTION of the MEMBER'S SHARE, where applicable.

## **6.10 Benefits inalienable**

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6.10.1 Save to the extent permitted by the ACT, the INCOME TAX ACT, the Maintenance Act, 1998 and the Divorce Act, 1979, no BENEFIT or right thereto provided for in the RULES, or right in respect of CONTRIBUTIONS made by or on behalf of a MEMBER shall be capable of being reduced, transferred, ceded, pledged or hypothecated or be liable to attachment or subject to any form of execution under a judgment or order of court, or to the extent of not more than R3000 per annum, be capable of being taken into account in the determination of a debtor's financial position in terms of the Magistrates' Court Act, 1944.

6.10.2 If a BENEFICIARY attempts to transfer, cede, pledge or hypothecate a BENEFIT or right, the BENEFIT shall, as the BOARD may direct, be withheld or suspended; provided that the BOARD may direct that the BENEFIT or part thereof be paid to one or more of the BENEFICIARY'S DEPENDANTS or to a guardian or trustee for the benefit of such DEPENDANT(s) during such period as they may determine.

6.10.3 If the estate of a BENEFICIARY entitled to a BENEFIT in terms of the RULES is sequestrated or surrendered, the BENEFIT shall, subject to the provisions of the ACT, not be deemed to form part of the assets of the insolvent estate and may not in any way be attached or appropriated by the curator of the insolvent estate or by the insolvent's creditors, notwithstanding anything to the contrary in any law relating to insolvency.

## **6.11 Payment of an accrued BENEFIT other than a death benefit where the MEMBER dies prior to payment of the accrued BENEFIT**

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6.11.1 Where a MEMBER who became entitled to a BENEFIT dies before the BENEFIT in terms of RULE 6.7 has been paid to him, the BENEFIT will be paid into his estate, or where he does not have an estate, into the UNCLAIMED BENEFITS FUND; or

6.11.2 Where a MEMBER who became entitled to a BENEFIT in terms of RULE 6.1 or 6.2 dies before the BENEFIT has been paid, this BENEFIT will be dealt with in the following manner:

6.11.2.1 if the MEMBER died before electing an ANNUITY, the FUND will pay the entire BENEFIT into the MEMBER'S estate as a lump sum death benefit, and the provisions of RULE 6.11.1 will apply;

6.11.2.2 If the MEMBER died after electing an ANNUITY, but before the ANNUITY had been purchased or the lump sum had been paid:

6.11.2.3 And the MEMBER specified a specific amount or percentage to be paid as a lump sum, the FUND will pay that amount or percentage into the MEMBER'S estate and the provisions of RULE 6.11.1 will apply;

6.11.2.3.1 The FUND will purchase an ANNUITY with the remaining BENEFIT from an INSURER specified by the MEMBER. In the event that no specification was made by the MEMBER, the BOARD will determine the INSURER; and

6.11.2.3.2 the BENEFICIARY of the ANNUITY will be the BENEFICIARY as nominated by the MEMBER to receive his death benefit;

6.11.2.4 If the MEMBER died after electing to purchase an ANNUITY, after the lump sum has been paid out but before the ANNUITY has been purchased:

6.11.2.4.1 the FUND will purchase an ANNUITY with the remaining BENEFIT from an INSURER specified by the MEMBER. In the event that no specification was made by the MEMBER, the BOARD will determine the INSURER; and

6.11.2.4.2 the BENEFICIARY of the ANNUITY will be the BENEFICIARY as nominated by the MEMBER to receive his death benefit.

6.11.2.5 If the MEMBER died after electing to purchase an ANNUITY, before the lump sum has been paid out but after the ANNUITY has been purchased:

6.11.2.5.1 and the MEMBER specified an amount or percentage to be paid as a lump sum, the FUND will pay that amount or percentage to the MEMBER'S estate and the provisions of RULE 6.11.1 will apply; and

6.11.2.5.2 the FUND will pay the remaining BENEFIT (if any) into the ANNUITY that has been purchased.

## 6.12 Payment of BENEFIT to a third party for the benefit of the MEMBER or BENEFICIARY

- 6.12.1 If the BOARD has good reason to believe that a MEMBER or BENEFICIARY entitled to BENEFITS in terms of the RULES is:
- 6.12.1.1 not responsible for his actions or incapable of managing his own affairs due to disease, psychiatric disorder or defect;
  - 6.12.1.2 addicted to drugs, intoxicating liquors or otherwise of intemperate habits;
  - 6.12.1.3 a person declared by a court to lack the capacity to control their personal finances (a prodigal); or
  - 6.12.1.4 failing or has failed on account of imprisonment, desertion or any other cause to support persons dependent upon him for maintenance,
  - 6.12.1.5 the BOARD may direct that the BENEFITS payable to that MEMBER or BENEFICIARY be paid in whole or in part to a guardian, curator or trustee or to a BENEFICIARY FUND as defined in the ACT for the benefit of the MEMBER or BENEFICIARY.
- 6.12.2 The BOARD will give notice of its intention to act under RULE 6.12.1 to the MEMBER, BENEFICARY, or their representative and give them an opportunity to present relevant factors to convince it to the contrary within a specified period.

## 6.13 Unclaimed Benefits

- 6.13.1 UNCLAIMED BENEFITS may be placed into an UNCLAIMED BENEFIT FUND.
- 6.13.2 Any UNCLAIMED BENEFIT will be subject to tax and at the rate as may be determined by REVENUE SERVICE from time to time.
- 6.13.3 The BOARD shall establish and implement a policy setting out procedures which are to be followed for tracing and verifying BENEFICIARIES and FORMER MEMBERS.
- 6.13.4 The procedures shall be reasonable, having regard to the circumstances and the value of the amount held in the FUND in respect of BENEFICIARIES and FORMER MEMBERS. The costs incurred as a consequence of the BOARD tracing and/or verifying the existence of BENEFICIARIES and FORMER MEMBERS will be deducted from the BENEFITS before distribution to the BENEFICIARIES and FORMER MEMBERS.

## 7. Protected disclosures

- 7.1 In addition to what is provided in sections 8 and 9 of the PROTECTED DISCLOSURES ACT, a disclosure by a TRUSTEE, PRINCIPAL OFFICER, DEPUTY PRINCIPAL OFFICER, ACTUARY or other officer or employee of the FUND or ADMINISTRATOR to the AUTHORITY constitutes a PROTECTED DISCLOSURE.
- 7.2 A TRUSTEE, PRINCIPAL OFFICER, DEPUTY PRINCIPAL OFFICER, ACTUARY or other officer or employee of the FUND or ADMINISTRATOR who makes a PROTECTED DISCLOSURE in accordance with this RULE and the provisions of the PROTECTED DISCLOSURES ACT, may not suffer any occupational or other detriment.
- 7.3 Any person referred to above who suffers any detriment, including occupational detriment as defined in the PROTECTED DISCLOSURES ACT, may -
- 7.3.1 seek the remedies provided for in section 4 of the PROTECTED DISCLOSURES ACT, where occupational detriment has been suffered;
  - 7.3.2 approach any court having jurisdiction for appropriate relief; or
  - 7.3.3 pursue any other process and seek any remedy provided for in law.

## 8. Personal information

- 8.1 Personal information refers to any information that relates to a living, identifiable person, and includes information relating to a MEMBER and/or BENEFICIARY'S name, age, identity number, address, health, marital status, race, gender and employment.
- 8.2 The FUND will analyse personal information relating to both MEMBERS and BENEFICIARIES, provided by the MEMBER in her MEMBER APPLICATION for membership, to provide benefits to the MEMBER and the BENEFICIARIES. The FUND may store personal information on its database for administrative purposes and to comply with applicable laws.

- 8.3** The FUND may also, from time to time, share personal information relating to MEMBERS and BENEFICIARIES with third party service providers, including without limitation, the ADMINISTRATOR, AUDITOR and ACTUARY.
- 8.4** Where personal information is shared as contemplated above, the FUND shall take all reasonable steps to ensure that all its third party providers:
- 8.4.1 only use the personal information for the administration and management of the FUND;
  - 8.4.2 do not disclose it to anyone else without the permission of the BOARD;
  - 8.4.3 comply with applicable data protection legislation, including the Protection of Personal Information Act, 2013.
- 8.5** The FUND shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of personal information.

## 9. General provisions

### 9.1 Currency

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Contributions and BENEFITS are payable in the currency of the Republic of South Africa.

### 9.2 Monetary advantage

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The SPONSOR, BOARD and the ADMINISTRATOR shall not derive a monetary advantage from monies paid into or out of the FUND save to the extent provided for in any agreement concluded with the FUND and no monies of the FUND shall become the property of any of the aforementioned other than specifically proved for in the RULES or such agreement(s).

### 9.3 Right to obtain copies of or to inspect certain documents

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- 9.3.1 The FUND shall deliver to any MEMBER on request by such MEMBER and on payment of an amount determined by the BOARD to cover any photocopying, printing and related costs, a copy of the RULES, last revenue account and last balance sheet.
- 9.3.2 The FUND shall make a copy of the RULES available to any MEMBER on the FUND's website or the website of its ADMINISTRATOR.
- 9.3.3 Every MEMBER shall be entitled to inspect without charge at the registered office of the FUND, a copy of the documents referred to in RULE 9.3.1 and the last report of the valuator (if any).

### 9.4 Amendments to the RULES

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- 9.4.1 The BOARD may at any time amend the RULES by a majority of votes; provided that:
- 9.4.1.1 the value of a MEMBER'S SHARE prior to amendment shall not be reduced;
  - 9.4.1.2 the amendment is not inconsistent with the provisions of the ACT and of the INCOME TAX ACT;
- provided further that an amendment to the RULES affecting the financial basis of the FUND is subject to the written consent of the SPONSOR and shall be referred to the ACTUARY for his comments before being adopted.
- 9.4.2 Within sixty days of the passing of a resolution effecting an amendment to the RULES, the PRINCIPAL OFFICER shall submit the amendment to the RULES to the AUTHORITY in the prescribed format and with the prescribed documents.
- 9.4.3 An amendment to the RULES shall only apply from the time it is registered by the AUTHORITY; however such amendment may be effective retrospectively.

### 9.5 Binding power of RULES

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The provisions of the RULES shall be binding on the BENEFICIARIES, the FUND and its officials, the MEMBERS, the PRINCIPAL OFFICER, the DEPUTY PRINCIPAL OFFICER (to the extent that one has been appointed), a person who institutes a claim against the FUND and any person whose claim against the FUND is derived from that person.

### 9.6 Role of the SPONSOR

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- 9.6.1 As one of the founding parties to the establishment of the FUND and because it has certain rights and obligations in relation to the BOARD and the FUND, the SPONSOR has an interest in the FUND and accordingly:
- 9.6.1.1 is entitled to make representations to the BOARD regarding any matter relating to the FUND;

- 9.6.1.2 is entitled to be advised when any meeting of the BOARD is to be held;
  - 9.6.1.3 may, if invited, attend any part or the whole meeting of the BOARD;
  - 9.6.1.4 has access to, on request, all BOARD resolutions, RULE amendments and such other information as the SPONSOR may reasonably require pursuant to its objectives as sponsor of the FUND;
  - 9.6.1.5 has the right to either itself, or through another FSP accredited or approved by the SPONSOR including its FINANCIAL ADVISOR, to market and distribute the FUND and its financial services and products;
  - 9.6.1.6 has a right to provide financial advice, education and support tools, as well as other financial products and services directly to MEMBERS provided that these are in the interests of the MEMBERS, in order to help improve the financial wellbeing of MEMBERS.
- 9.6.2 The FUND is not liable for any damages suffered by any person as a result of any advice given in terms of this RULE, or for the failure by any MEMBER or DEPENDANT to seek or follow any advice in terms of this RULE.
- 9.6.3 The SPONSOR will, to the extent as required by law, maintain in force suitable professional indemnity and fidelity insurance cover to safeguard the FUND against loss due to defalcation, theft or fraud, a breach of trust, statute or any fiduciary duty in respect of any services delivered by the SPONSOR, in any capacity, or any of its representatives or employees providing services to the FUND. The SPONSOR will further ensure that any nominee company under its control contracted for the purpose of holding money or assets of the FUND has similar professional and fidelity insurance cover in place.

## 10. Termination of the FUND

- 10.1** The FUND may be wound up if –
- 10.1.1 the BOARD resolves that it should be wound up; or
  - 10.1.2 there are no MEMBERS of the FUND; or
  - 10.1.3 a court of competent jurisdiction determines that it be wound up.
- 10.2** If the FUND is wound up in any of the circumstances referred to above, the BOARD shall appoint a liquidator, subject to the approval of the AUTHORITY.
- 10.3** The liquidator shall dissolve the FUND by dividing the assets of the FUND among the MEMBERS on such basis as the liquidator deems equitable, provided that –
- 10.3.1 the amount allocated by the liquidator to each MEMBER shall be transferred to an APPROVED FUND selected, in writing, by the MEMBER and capable of accepting such transfer;
  - 10.3.2 every MEMBER who received a BENEFIT from the FUND may for the purpose of this RULE be regarded as being a MEMBER on the date of termination of the FUND. The BENEFIT paid to such former MEMBER shall be taken into consideration in determining the amount payable, if any; and
  - 10.3.3 if the FUND is dissolved in terms of section 28 of the ACT, all monies remaining unclaimed for a period of twenty four months after the date on which the payment of BENEFITS by the liquidator commenced shall be paid into an Unclaimed Benefits Fund specifically constituted for this purpose and thereafter there shall be no claim against the FUND in respect of such BENEFITS. The liquidator shall include in his final liquidation and distribution account a record of the amount paid to the UNCLAIMED BENEFITS FUND and the BENEFITS in respect of which the amount was so paid. The liquidator shall furnish to the AUTHORITY a certificate stating that he took all reasonable steps to trace the persons entitled to the BENEFITS.
- 10.4** An AUDITOR approved by the AUTHORITY shall certify that the liquidator's final liquidation and distribution account is correct.
- 10.5** If the FUND is dissolved in terms of section 29 of the ACT and the order for the winding up of the FUND does not make section 410 of the Companies Act, 2008 applicable or make any other directions regarding unclaimed monies, the provisions of RULE 10.3.3 shall apply.
- 10.6** On the liquidation of the FUND the MEMBERS are deferred creditors of the FUND and their claim in their capacity as MEMBERS shall not be met until the claims of ordinary creditors have been paid.