

KOUROS STOW SUPERANNUATION FUND PTY LTD

(ACN. 084 849 016)

"Principal"

-and-

KOUROS STOW SUPERANNUATION FUND PTY LTD

(ACN. 084 849 016)

"Trustee"

TRUST DEED

-establishing the-

KOUROS STOW SUPERANNUATION FUND

T O T H A N D C O M P A N Y

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THIS DEED is made the 22ND day of OCTOBER 1998

B E T W E E N:

KOUROS STOW SUPERANNUATION FUND PTY LTD the registered office of which is situate at BKR Walker Wayland, Accountants, Level 3, 60 Collins Street, Melbourne in the said State
(hereinafter called "the Principal")

-AND-

KOUROS STOW SUPERANNUATION FUND PTY LTD the registered office of which is situate at BKR Walker Wayland, Accountants, Level 3, 60 Collins Street, Melbourne in the said State
(hereinafter called "the Trustee")

WHEREAS:

- A. It has been determined to establish and maintain a superannuation fund for the purpose of providing retirement and other benefits for such persons who are eligible to be Members of the Fund and their Dependents and for other approved ancillary purposes.
- B. The Trustee has agreed to act as Trustee of the Fund.
- C. The Fund is established and will be maintained solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment or for the Dependants of Members in the event of the death of a Member or for other approved ancillary purposes.
- D. The Fund will be conducted so as to attract the concessional rate of Taxation which is applicable to Complying Superannuation Funds.

Not Chargeable Pursuant To
Sub-Section 1111-A
Trn:394238 24-DEC-1998
Stamp Duty Victoria, TX50

NOW THIS DEED WITNESSES:

DIVISION A

ESTABLISHMENT, PURPOSE AND COVENANTS

1. ESTABLISHMENT

- (a) **Establishment**
The Principal hereby establishes a fund, with effect on the date specified in Schedule A(5), to be known by the name set out in Schedule A(4).
- (b) **Fund Vested in Trustee**
The Fund is vested in the Trustee and will be managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

2. PURPOSE

- (a) **Superannuation Benefits**
The purpose of the Fund is the provision of the benefits referred to in recital C in accordance with the Relevant Requirements.
- (b) **Old Age Pension**

Where sub-clause 43(c) applies, the sole or primary purpose of the Fund is the provision of an old-age pension as required by the Relevant Requirements.

3. COVENANTS

(a) **Covenants of Principal**

The Principal covenants with the Trustee to perform and observe the covenants, trusts and conditions of this Deed so far as the same are or ought to be observed by the Principal.

(b) **Covenants of Trustee**

The Trustee for itself, its successors and assigns covenants with the Principal to perform and observe the covenants, trusts and conditions of this deed and the covenants and obligations imposed under the Relevant Requirements so far as the same are or ought to be observed by the Trustee. Without limiting the generality of the foregoing, while it is a requirement under the Relevant Requirements the Trustee specifically covenants as follows:-

- (i) to act honestly in all matters concerning the Fund;
- (ii) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (iii) to exercise and perform the Trustee's duties and powers in the best interests of the beneficiaries;
- (iv) to keep the money and other assets of the Fund separate from any money and assets, respectively that are:
 - (A) held by the Trustee personally; or
 - (B) money or assets, as the case may be, of an Employer or an associate of an Employer;
- (v) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly forming or exercising the Trustee's functions and powers;
- (vi) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
 - (A) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - (B) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risk from inadequate diversification;
 - (C) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - (D) the ability of the Fund to discharge its existing and prospective liabilities;
- (vii) if there are any reserves of the Fund - to formulate and give effect to a strategy

for the prudential management of such reserves, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;

- (viii) to allow a Beneficiary or a Member access to any information or any documents as may be prescribed by the Relevant Requirements.

DIVISION B

MANAGEMENT AND ADMINISTRATION

4. INTERPRETATION - DEFINITIONS

In this Deed unless the context otherwise requires:

"A" Class Accumulation Account" means the Accumulation Account of a Member for the period that person was a Member of the "A" Class;

"Account" means Accumulation Account or Pension Account;

"Accumulation Account" means the account established on behalf of each Member or Beneficiary as described in Clause 12;

"Actuary" means the actuary (if any) for the time being appointed pursuant to this Deed;

"Administration Manager" means a person appointed as Administration Manager of the Fund in accordance with sub-clause 20(b);

"Annuity" has the same meaning as defined in the Relevant Requirements;

"Approved Benefit Arrangement" means a fund or benefit arrangement other than the Fund including, without limitation, another Complying Superannuation Fund, an Approved Deposit Fund, an Eligible Rollover Fund and an Annuity arrangement into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to comply with the Relevant Requirements;

"Approved Deposit Fund" in relation to a year of income means a fund which is a complying ADF in accordance with the Tax Act;

"Auditor" means the auditor for the time being appointed under sub-clause 20(a) of this Deed;

"B" Class Accumulation Account" means the Accumulation Account of a Member for the period that person was a Member of the "B" class;

"Beneficiary" means a person presently and absolutely entitled to receive a Benefit at the relevant time, including a Pensioner, but does not include a person who is a Member at that time;

"Benefit" means any amount payable by the Trustee out of the Fund in accordance with this Deed to or in respect of a Member;

"Benefit Entitlement" means any amount held in the Fund which may become payable to a Member, Dependent or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it includes a contingent right to payment of an amount;

"C" Class Accumulation Account" means the Accumulation Account of a Member for the period

that person was a Member of the "C" class;

"Class" means Membership Class;

"Commissioner" means, as the case requires, the Commissioner of Taxation or the Insurance and Superannuation Commissioner or such other regulatory body having responsibility for the administration of superannuation;

"Complying Superannuation Fund" in relation to a year of income means a fund which is a Complying Superannuation Fund pursuant to the Relevant Requirements;

"Constitutional Operation" has the same meaning as defined in the Relevant Requirements;

"Contributions" means gross payments to the Fund by Members and Employers in accordance with the provisions of this Deed prior to the withdrawal of any Taxation payable in respect of those Contributions;

"Deed" means these presents and any authorised alterations, additions, amendments, modifications or variation to it;

"Dependant" in relation to a Member or former Member means:

- (i) the Spouse of a former Member or the widow or widower of a deceased Member; or
- (ii) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as the child of the Member; or
- (iii) any other person who, in the opinion of the Trustee, was substantially dependent on the Member at the relevant time;

"Directors" means the directors or board of management for the time being of the Trustee or any Employer, as the case requires, and "Director" has a corresponding meaning;

"Eligible Person" means any person who is permitted to become a Member of the Fund under the Relevant Requirements;

"Eligible Rollover Fund" has the same meaning as contained in the Relevant Requirements;

"Eligible Termination Payment" has the same meaning as contained in the Relevant Requirements;

"Employee" means any Eligible Person in the employment of an Employer PROVIDED THAT an Employer may deem any person to be an Employee for such period and on such terms and conditions as it will determine for the purposes of an Employer making Contributions in order to avoid liability for the superannuation guarantee charge under the Guarantee Act;

"Employer" means any Participating Employer and in relation to an Employee or Member means the Employer of such Employee or Member;

"Equalisation Account" means the account established pursuant to sub-clause 12(e);

"Excluded Fund" means a superannuation fund with fewer than five members or such other meaning as may be given to it from time to time under the Relevant Requirements;

"Financial Assistance" means financial assistance granted to the Fund under Part 23 of the Superannuation Industry (Supervision) Act 1993;

"Financial Year" means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee determines;

"Forfeiture Account" means the account established pursuant to sub-clause 26(c);

"Full-Time Gainful Employment" in relation to a Member means a Member who is Gainfully Employed on a full-time basis within the meaning of the Relevant Requirements;

"Fund" means the Fund established by this Deed;

"Fund Earning Rate" means the earning rate for the Fund (which may be negative) determined under paragraph (iii) of sub-clause 12(d) after taking into account such provisions or reserves for future contingencies as the Trustee will consider reasonable;

"Fund Year" means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee may determine from time to time;

"Gainful Employment" in relation to a Member means engagement in any business, trade, professional, vocation, calling, occupation or employment for gain to the extent required by the Relevant Requirements;

"SGA Act" means the Superannuation Guarantee (Administration) Act 1992 and any regulations made pursuant thereto;

"Individual Trustee" means an individual person who is a Trustee of the Fund;

"Insurer" means an insurer with whom the Trustee effects a Policy;

"Investment Manager" means a person appointed as such in accordance with sub-clause 20(c);

"Levy" includes a levy payable by the Fund to the Commissioner in accordance with the Superannuation Supervisory Levy Act 1991, the Superannuation (Financial Assistance Levy) Act 1993 and any other legislation or regulations which impose a levy or levies on the Fund;

"Life Pension" means a Benefit paid in the form of an old-age pension which is acceptable to the Commissioner or complies with the Relevant Requirements;

"Member" means an Eligible Person who has been accepted as a Member of the Fund under Clause 8 and who has not ceased to be a Member under sub-clause 8(f) and "Membership" will mean Membership of the Fund;

"Member's Vested Contributions" means those Contributions, plus net earnings, which are required to be vested in the Member by the Relevant Requirements reduced by:

- (i) the cost of effecting any Policy on behalf of a Member where the Trustee determines that the premium should be wholly or partially debited against Member's Vested Contributions in accordance with sub-clause 34(c); or
- (ii) any costs debited against Member's Vested Contributions in accordance with sub-clause 19(a);

"Membership Class" means the Class or Classes of Membership of a Member as determined in accordance with Clause 42;

"Nominated Dependent" means a person nominated by a Member as the Nominated Dependant;

"Non-Preserved Amount" means an amount including a Roll Over Payment payable to or in respect of a Member which is not required to be preserved or at the time of payment is no longer required to be preserved under the Relevant Requirements;

"Normal Retirement Age" means the age of 65 years or such other age being not less than 55 years as is acceptable to or required by the Relevant Requirements and as the Trustee with the consent of the Employer of that Member determines PROVIDED THAT where Benefits are determined under sub-clause 43(c), "Normal Retirement Age" will not be less than 60 years;

"Participating Employer" means any person, firm or corporation that by agreement with the Trustee is admitted to participation in the Fund under Clause 35;

"Part-Time Gainful Employment" in relation to a Member means a Member who is employed for at least 520 hours per annum or a Member who fulfils any other requirements specified in the Relevant Requirements;

"Pension" includes a Benefit payable by instalments out of the Account of a Member or Beneficiary whether such instalments be equal or unequal;

"Pensioner" means a Member to whom a Pension is payable and includes a Reversionary Beneficiary in receipt of a Pension;

"Pension Account" means an account established pursuant to sub-clause 27(b);

"Policy" means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy and includes any policy covering any two or more of the foregoing risks and it further includes any policy which provides that Benefits will be payable to the Trustee on the death or disablement of a Member;

"Preserved Payment" means a payment made to the Fund by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be preserved as provided for in this Deed in order for the Fund to be a Complying Superannuation Fund and "Preserved Payment Benefit" means a Benefit arising from a Preserved Payment;

"Principal" means the person described as such in Schedule A;

"Relative", in relation to a Member or former Member means any of the following, namely:

- (i) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of the Spouse of the Member; and
- (ii) the Spouse of any person specified in paragraph (i);

"Relevant Requirements" means any requirements under the SIS Act, the Occupational Superannuation Standards Act 1987, the Tax Act and any regulations made pursuant to such Acts and any other present or future legislation with which the Trustee must comply in order for the Fund to qualify for concessional Taxation treatment as a Complying Superannuation Fund or to meet any other requirements of the Commissioner and includes any proposed requirements, rulings, announcement or obligations which the Trustee believes will have effect retrospectively;

"Retires from Employment" means actual retirement by a Member from employment by the Employer or retirement as defined by the Relevant Requirements for the payment of Benefits;

"Retires from Gainful Employment" means actual retirement by a Member from Gainful Employment or retirement as defined for the purposes of the Relevant Requirements for the payment of Benefits;

"Reversionary Beneficiary" means a Dependant who is eligible to receive a Benefit upon the death of a Pensioner;

"Roll Over Payment" means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances which satisfy the Relevant Requirements to or from any Approved Benefit Arrangement and will include an Eligible Termination Payment by an Employer in consequence of the termination of the employment of a Member;

"Shortfall Component" has the same meaning as contained in section 64 of the SGA Act;

"SIS Act" means the Superannation Industry (Supervision) Act 1993 and any regulations made pursuant thereto;

"Spouse" in the definition of "Dependant" and "Relative" means:

- (i) a person legally married to a Member at any time; or
- (ii) a person who, although not legally married to the Member, in the opinion of the Trustee lives with the Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member the term "widow" or "widower" includes such a person,

PROVIDED THAT where there is more than one such person the Trustee will determine which one or more of them will be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee will determine the proportions in which a Benefit payable to the Spouse is to be divided between them;

"Tax Act" means the Income Tax Assessment Act 1936 and any regulations issued under that Act;

"Taxation" includes income tax, capital gains tax, tax on Eligible Termination Payments, payroll tax, land tax, stamp duty and any other taxes or duties paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member, Dependant or Beneficiary;

"Total and Permanent Disablement":

- (i) has the same meaning as contained in any Policy effected by the Trustee with an Insurer in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member; or
- (ii) if there is no Policy containing such a term effected in respect of a Member then Total and Permanent Disablement in relation to a Member means physical or mental incapacity of such a degree that two registered medical practitioners have certified that in their opinion the Member is incapable of continuing to engage in current employment with that Member's Employer,

and the expression "Totally and Permanently Disabled" has a corresponding meaning;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted which are appointed in accordance with Clause 14 of this Deed;

"Unclaimed Benefits" means those Benefits described as "unclaimed money" under Part 22 of the SIS Act;

"Withdrawal Benefit" has the same meaning as defined in the Relevant Requirements;

5. INTERPRETATION - GENERAL

- (a) **Plural and gender of words**

In this Deed, unless inconsistent with the subject matter or context, words importing one gender will include the other gender and words importing the singular number will include the plural number and vice versa.

(b) **Headings to Clauses**

The headings in this Deed are for convenience only and will not affect the interpretation of this Deed.

(c) **Statutory Enactments**

References to any statutory enactment will be construed as references to that enactment as amended, modified or re-enacted from time to time and will include any enactment in substitution or replacement for such statutory enactment. Any reference in this Deed to a provision of an enactment will include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

(d) **Fund Subject to Relevant Requirements**

This Deed will be read and construed on the basis that the Relevant Requirements are deemed to be incorporated into the Deed to the extent that they impose covenants or obligations on the Trustee in order for the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Commissioner and this Deed will be further read and construed on the basis that where there is any inconsistency between a provision in this Deed and a provision under the Relevant Requirements the latter will prevail PROVIDED THAT this Deed will not be so read or construed and no such provision of the Relevant Requirements will be so incorporated if to do so would constitute a breach of the power granted by Clause 40 to add to, amend, alter, modify, rescind or vary the provisions of this Deed.

(e) **Requirements of Commissioner**

Any references to any requirements, consents or approvals being required to be given by the Commissioner or for the purposes of satisfying the Relevant Requirements will mean requirements, consents or approvals of the Commissioner or under the Relevant Requirements.

6. **GENERAL PROVISIONS**

(a) (i) **Employer's powers not prejudiced**

Nothing in this Deed will affect the powers of an Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between an Employer and its Employee. The existence or cessation of any actual or prospective or possible Benefit under the Fund will not be grounds for claiming or increasing damages in any action brought against the Employer in respect of any termination of employment or otherwise.

(ii) **Rights of Members**

The provisions of this Deed will not in any way affect the right of a Member or the personal representative of a Member or any other person to claim compensation or damages under any Act of Parliament or at common law or in circumstances where the Member is injured or dies as a result of an event arising out of or in the course of the employment of the Member.

(b) **Exercise of Employer's and Trustee's rights**

Subject to the Relevant Requirements, all powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on an Employer or the Trustee by, under or for the purposes of this Deed may be fully and effectively exercised, made, done or performed by or on behalf of an Employer or

Trustee:

- (i) where an Employer or Trustee is a company, then by resolution of its Directors in accordance with its articles of association or by any person or persons having the authorisation of such Directors to so act on their behalf; or
- (ii) where the Trustee consists of Individual Trustees, then by unanimous resolution of those persons or at a meeting of such persons where decisions are to be made by a majority of such persons holding the office of Trustee or by such other number as may be required under the Relevant Requirements; or
- (iii) where an Employer consists of individuals, then by a majority of such individuals.

(c) **Exercise of Trustee's Powers and Discretions**

- (i) This sub-clause does not apply if the Fund is an Excluded Fund.
- (ii) Unless permitted under the Relevant Requirements, nothing in this Deed is to be read or construed as permitting the Trustee to be subject, in the exercise of any of the Trustee's powers under this Deed, to direction by any other person.
- (iii) Any discretion under this Deed that is exercisable by a person other than the Trustee cannot be exercised unless:-
 - A. the Trustee first consents in writing to the exercise of that discretion; or
 - B.
 - (i) the exercise of the discretion relates to the contributions that an Employer will, after the discretion is exercised, be required or permitted to pay to the Fund; or
 - (ii) the exercise of the discretion relates solely to a decision to terminate the Fund; or
 - (iii) the exercise of the discretion is otherwise allowed under the Relevant Requirements.

(d) **Superannuation Guarantee Act**

The Trustee will comply with the requirements of the SGA Act to enable the Fund to accept Contributions in accordance with the SGA Act.

7. **PROPER LAW**

This Deed will be governed in accordance with the laws of the State or Territory of the Commonwealth of Australia specified in Schedule A. The Trustee, Members, Beneficiaries and Employers will accept the jurisdiction of the Courts of that State or Territory. The provisions of Section 35b of the Trustee Act of South Australia will not apply to this Deed.

8. **MEMBERSHIP OF FUND**

(a) **Application for Membership**

- (i) The Trustee will invite such Eligible Person as it, in its absolute discretion, selects to become Members of the Fund.
- (ii) A completed application for Membership in the form of Schedule B or in such other form as the Trustee from time to time determines will be provided to the Trustee.
- (iii) Where a completed application for Membership is not provided in accordance with paragraph (ii) above, the payment of a Contribution by an Employer in respect of an Employee or the acceptance of a Shortfall Component in respect of an Employee will be deemed to constitute an application for Membership of the Fund by that Employee.

(b) **Admission to Membership**

- (i) Upon actual or deemed receipt of an application for Membership, the Trustee may determine to admit the Employee or Eligible Person to Membership of the Fund.
- (ii) The Member will be deemed to have joined the Fund on a date determined by the Trustee or, where the Trustee makes not such determination, on the date on which the completed application for Membership is received or is deemed to have been received.
- (iii) Subject to any conditions which may be applied under the provisions of this Deed, the Trustee may impose such conditions on an applicant's admission and the rights and duties of the Member as it determines and may limit and impose conditions upon Benefits as it sees fit and the Trustee may remove or vary all or any of the aforesaid conditions at any time.
- (iv) Upon admission to Membership of the Fund, the Member will be bound by this Deed in all respects as if the Member were an original party to the Deed.

(c) **Members and Beneficiaries to Provide Information**

- (i) Each applicant for Membership and any Beneficiary will when requested by the Trustee furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund, and will submit to medical examinations as required by the Trustee by a registered medical practitioner who is acceptable to the Trustee.
- (ii) Where a Member or Beneficiary fails to comply with the provisions of this sub-clause, the Trustee may suspend the collection of any Contributions in respect of that Member or withhold any Benefits in respect of that Member or Beneficiary or impose such other conditions on the continued Membership of that Member or on the Beneficiary as the Trustee will deem appropriate.

(d) **Incorrect or Misleading Information**

Where a Member or Beneficiary furnishes information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of a Member or Beneficiary and the information supplied is incorrect or misleading or any relevant information is deliberately withheld the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information

been supplied.

(e) **Information re Age**

A Member will inform the Trustees as soon as practicable after the Member ceased Part-Time Gainful Employment or Full-Time Gainful Employment after age 65 years.

(f) **Cessation of Membership**

A person will cease to be a Member of the Fund upon the earliest to occur of the following:

- (i) the date upon which payment of all the Member's Benefits is made to the Member or to an Approved Benefit Arrangement on behalf of the Member;
- (ii) the death of the Member;
- (iii) the date on which Unclaimed Benefits in respect of a Member are paid to the Commissioner;
- (iv) the date when Benefits payable to or on behalf of a Member cease to be payable; or
- (v) such date as the Trustee reasonably determines,

PROVIDED THAT where a Policy providing disablement benefits has been effected in respect of the Member, that Member will remain a Member for such period following resignation, dismissal or retirement from Gainful Employment as the Trustee determines.

9. **MEMBERSHIP NOTIFICATION REQUIREMENTS**

- (a) Subject to paragraph (b) below, the Trustee will arrange for prospective Members, Members, former Members and Beneficiaries to be furnished with such information or documentation, at such time and in such manner, as is required by the Relevant Requirements.
- (b) No Member or Dependent of a Member will be entitled to obtain information in respect of any details of the operation of the Fund or on any matter which may relate to the conduct of the Fund which in the opinion of the Trustee would be inappropriate to disclose other than as is provided for by this Clause.
- (c) Where a copy of this Deed and any other documents are required by the Relevant Requirements to be made available for inspection by any Member or Beneficiary then, unless otherwise required by the Relevant Requirements, it will be sufficient to make a copy of this Deed or such documents available to the Member or Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when that office or business is open.

10. **MEETINGS OF MEMBERS**

The Following provisions will apply in relation to meetings of Members of the Fund:

- (a) to call a meeting of Members will require a notice to be served on the Trustee signed by 20 Members or at least one-half of the number of Members in the Fund, whichever is the lesser, which notice will request a meeting of Members;

- (b) the Trustee may convene a meeting of Members within 14 days of receiving the request and will send a notice of meeting to each Member specifying that a meeting will be held within 14 days of that notice being issued;
- (c) the Trustee may at any time convene a meeting of Members by notice in writing;
- (d) every notice of meeting will:
 - (i) be posted or given at least 10 days before the meeting;
 - (ii) advise the place and time of the meeting;
 - (iii) advise the Member that a proxy may be appointed to vote on behalf of the Member at the meeting PROVIDED THAT the Member lodges the form of proxy with the Trustee not later than 24 hours before the meeting;
 - (iv) be accompanied by a form of proxy approved by the Trustee;
 - (v) set out the matters including any resolutions to be considered at the meeting;
- (e) every notice served will be deemed to have been validly given if it is given personally to the Member or if posted by prepared ordinary mail addressed to the Member at the last known address of the Member and when so posted the notice will be deemed to have been given 3 days after the date of posting;
- (f) the Trustee will appoint a chairperson of the meeting and will make such regulations concerning the conduct of the meeting as it may decide;
- (g) a quorum for the meeting will be 10 Members present in person or at least 25% of the Members of the Fund whichever is the lesser PROVIDED THAT if a quorum is not present within 30 minutes of the time appointed for the meeting the chairperson of the meeting will adjourn the meeting to the same time and place in the following week and a quorum will be the Members present in person or by proxy at the adjourned meeting;
- (h) each Member will be entitled to one vote with the chairperson being given a casting vote in the event of an equality of votes.

11. FUND ASSETS

The gross assets of the Fund will consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of this Deed and will include:

- (a) the amount, if any, standing or transferred to the credit of the Fund at or after the date from which this Deed comes into effect;
- (b) such Contributions (if any) as the Members make to the Fund at any time;
- (c) such Contributions as an Employer makes to the Fund at any time;
- (d) income arising from any investment or received from any trust under which the Trustee has a beneficial interest (vested or contingent) and the accumulation of that income;
- (e) profits and other benefits arising from any investment and the accumulation of those profits;

- (f) the proceeds (including bonuses) of any Policy held by the Fund;
- (g) moneys, investments and other property transferred to the Fund as a Roll Over Payment;
and
- (h) any Shortfall Components or Financial Assistance received by the Fund.

12. **ACCOUNTS**

(a) **Separate Accounts**

The Trustee will establish a Accumulation Account in respect of each Member or Beneficiary for each Class which is applicable.

(b) **Credits**

There will be credited to the appropriate Accumulation Account, according to the Class to which they relate, such amounts as the Trustee from time to time determines.

(c) **Debits**

There will be debited to the appropriate Accumulation Account, according to the Class to which they relate, such amounts as the Trustee from time to time determines.

(d) **Income Account**

(i) The Trustee may establish an Income Account for the Fund to which will, subject to sub-clause (g) below, be credited the following:

- A. all income and profits of the Fund each year;
- B. credits arising out of adjustments pursuant to sub-clause (f) below;
- C. any amount transferred from the Equalisation Account pursuant to sub-clause (e) below;
- D. the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Account;
- E. any Financial Assistance received by the Fund and not credited to an Account;

and profits of the Fund will include any surplus arising from a valuation undertaken at any time during the year in accordance with sub-clause (h) below.

(ii) The Income Account will, subject to sub-clause (g) below, be debited with the following:

- A. any loss sustained on the disposal of any investments of the Fund;
- B. any costs or charges incurred pursuant to Clause 19 which are not debited to an Account;
- C. any debits arising out of adjustments pursuant to sub-clause (f) below;
- D. the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Account;

- E. any deficiency arising from a valuation undertaken in accordance with sub-clause (h) below;
- F. any amount payable or which may become payable by way of Taxation in respect of Contributions, Shortfall Components and income and profits of the Fund which are not debited to an Account as the Trustee determines to be equitable;
- G. any amount of Levy payable by the Fund and not debited to an Account;
- H. any income transferred to the Equalisation Account.

- (iii) Following the debiting of the Income Account as specified in paragraph d(ii) above, at the end of each Fund Year the Trustee will determine the Fund Earning Rate.
- (iv) Subject to sub-clause 12(g), the amount determined as the earnings of the Fund will be allocated from the Income Account to each Account in proportion to the amount standing to the credit of that Account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for the amounts (if any) credited or debited to the Account since that date.
- (v) Any amount remaining in the Income Account after distribution of earnings pursuant to paragraph (d)(iv) above will be transferred to the Equalisation Account established under sub-clause (e) below.
- (vi) In the event that the Trustee is required to establish a Fund Earning Rate in respect of a part of a Fund Year then such interim Fund Earning Rate for that period will be determined by the Trustee in accordance with the Relevant Requirements on a basis which the Trustee considers to be equitable. The Trustee will when required by the Commissioner or the Relevant Requirements notify the Members of the basis of the calculation of the interim Fund Earning Rate.

(e) **Equalisation Account**

- (i) The Trustee will have power at any time to establish an Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any amount remaining in the Income Account under sub-clause (d) above.
- (ii) Whilst any moneys are held in the Equalisation Account, they will not form part of any Accumulation Account or Pension Account and any income earned by the Fund on the moneys held in the Equalisation Account will be credited to the Equalisation Account.
- (iii) The Equalisation Account is to be used by the Trustee to stabilise the investment earnings of the Fund and to provide for such future contingents as the Trustee determines and the Trustee will have the discretion to deal with the assets of the Equalisation Account as it sees fit in the supplementation of the Fund Earning Rate and the Trustee will additionally have power to debit the Equalisation Account with any Taxation payable in respect of any income derived by the Fund.

(f) **Adjustment of Accounts**

In determining the amount standing to the credit of an Account at the time a Benefit is calculated or becomes payable, the Trustee will make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as it will in its discretion consider equitable and in accordance with the Relevant Requirements and the Income

Account will be debited or credited accordingly.

(g) **Specific Investments**

If the Trustee undertakes to invest separately in respect of certain Members or Beneficiaries, the Trustee will record on whose behalf such specific investments are made for the purposes of determining allocation to the appropriate Accounts. The income and profits (less losses) arising from such specific investments and any costs or charges applicable to such specific investments and any Taxation which is payable or may become payable in respect of such specific investments will not be allocated to the Income Account. The income and profits (less losses) arising from such specific investments applicable to any particular Account will be allocated directly to that Account which will also be debited directly with the appropriate proportion of any costs or charges applicable to such investments and any Taxation which is payable or may become payable in respect of such specific investments.

(h) **Valuation**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Relevant Requirements will require the Trustee will make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and will determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account and the value so determined in respect of each asset will then be reflected in the balance sheet and other accounts of the Fund PROVIDED THAT any surplus or deficiency determined on the valuation of a specific investment accounted for will be credited or debited on the Account of the Member or Beneficiary in respect of whom the specific investment was made.

13. FUND RECORDS, DISCLOSURE AND INVESTIGATION

(a) **Receipt and payment of moneys**

All moneys of the Fund will be lodged as soon as practicable to the credit of an account in the name of the Fund kept with a bank, friendly society, building society or similar body as determined from time to time by the Trustee or to the credit of an Insurer for the payment of premiums or into the trust account of a Solicitor, Accountant or Investment Manager appointed in accordance with this Deed.

(b) **Issue of receipts**

A receipt given on behalf of the Fund by the Trustee or by the secretary (if any) of the Fund or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund will be a sufficient discharge to the person by whom the moneys are paid.

(c) **Records and Accounts to be kept**

In addition to the preparation and retention of all accounts and records which it is usual for the Trustee of a superannuation fund to prepare and retain, the Trustee will arrange for the preparation, keeping, retention and (where necessary) lodging of all records, books, accounts, minutes, reports, returns, certificates and other information and documentation as may be required by the Relevant Requirements.

(d) **Audit**

The Trustee will ensure compliance with the Relevant Requirements in relation to the auditing of accounts, books and relevant records of the Fund.

(e) **Information of Trustee**

When requested by the Trustee, an Employer will give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for

the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer pursuant to this Deed and will not be required to verify that information.

(f) **Disclosure and Reporting Requirements**

The Trustee will arrange to provide to Employers, the Commissioner, the Actuary, the Auditor and any other persons specified in the Relevant Requirements such information and documentation, at such times and intervals, as is required under the Relevant Requirements.

14. **FUND TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL**

(a) **Definitions**

In this Clause:-

"Employer Representative", "Independent Director", "Independent Trustee" and "Member Representative" have the same meaning as set out in the SIS Act;

"Trustee Party" is a collective reference to the terms defined above.

(b) **Compliance with Relevant Requirements**

The office of Trustee will be filled and maintained in accordance with the Relevant Requirements. Without limiting the generality of the foregoing:-

(i) the Trustee of the Fund will at all times be a Constitutional Corporation unless sub-clause 43(c) applies or the Relevant Requirements otherwise require; and

(ii) the Trustee, the Principal and the Members will all take such action as and when it may be required from time to time to ensure that the Fund complies with the provisions of the Relevant Requirements which deal with representation of employers and members on the board of the Trustee or a Trustee company.

(c) **Appointment and Removal of Trustee**

A Trustee of the Fund shall be appointed in writing in accordance with the provisions hereof by the Trustee provided that in the event that there is no Trustee of the Fund then the majority of Members shall determine who shall act as Trustee in accordance with the provisions of this Deed and the Relevant Requirements and shall take such steps as are necessary to appoint the persons to the office of Trustee.

(d) **Independent Trustee or Independent Director**

(i) An Independent Trustee or an Independent Director may be appointed in accordance with the Relevant Requirements. An Independent Trustee or an Independent Director will not be entitled to a casting vote.

(ii) The Trustee will ensure that the procedure for removal of a Independent Director or Independent Trustee is published to Members as required by the Relevant Requirements.

(e) **Change of Trustee**

A Trustee or a Trustee Party shall immediately cease to act as Trustee of the Fund:

(i) if being a corporation it is placed in receivership or in liquidation;

(ii) if it is disqualified from holding office by operation of the Relevant Requirements

or is removed or suspended from office under the Relevant Requirements;

- (iii) if it resigns by notice in writing to the Members;
- (iv) if being an Individual Trustee, the person dies or becomes mentally or physically incapacitated;
- (v) if the person ceases to be a Member Representative or an Employer Representative;
- (vi) if the person ceases to be an Independent Trustee; or
- (vii) subject to the Relevant Requirements, 7 days after the person is removed from office by notice in writing given by a majority of the Members.

(f) **Continuity of Office**

Any person who acts as a Trustee shall on ceasing to be a Trustee under this Clause do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books to the remaining or new Trustee.

(g) **Office of Trustee**

The office of Trustee shall be filled at all times and in the event of a vacancy occurring other than in the case of an Independent Trustee who is not the sole Trustee of the Fund, a new Trustee shall be appointed in accordance with the provisions of this Deed within 90 days of such vacancy occurring.

(h) **Member may be Trustee**

No Trustee Party, director of a Trustee company or officer or employee of an Employer shall by virtue of their office or the powers delegated to them by the Trustee be disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

(i) **Administration of Office of Trustee**

To the extent that the above provisions of this clause and the Relevant Requirements are silent on any matters relating to the composition, administration, management or method of functioning of the office of Trustee, the Trustee will have the absolute discretion to formulate and amend guidelines on such matters subject to the Relevant Requirements.

15. TRUSTEE'S INVESTMENT POWERS

(a) **Authorised Investments**

So much of the moneys forming part of the Fund from time to time as will not be required immediately for the payment of Benefits or other amounts authorised by this Deed will be invested in accordance with the investment strategy of the Fund in any of the following investments:

- (i) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (ii) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;

- (iii) on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution in any type of account, whether secured or unsecured and on such terms as the Trustee will determine;
- (iv) on deposit with or on loan to any Employer or any other person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- (v) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interest for life or any lesser term or in reversion of otherwise arising;
- (vi) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (vii) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (viii) any other investments which the Trustee considers appropriate and which satisfy the Relevant Requirements,

PROVIDED THAT the Trustee must not make a loan to or give any financial assistance to a Member or a relative of a Member of the Fund and PROVIDED FURTHER THAT the Trustee will ensure that all investments will be in accordance with the Relevant Requirements.

(b) **Power to Deal with Investments**

The Trustee will have power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

(c) **Interest of Trustee in Investment**

- (i) Subject to paragraph (ii) below, the Trustee and any Director will have the power and are authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (ii) The Trustee and any Director will disclose details of any interest in an investment to which paragraph (i) applies in the manner prescribed under the Corporations Law and the Relevant Requisitions.

(d) **Specific Investments**

The Trustee may, but is under no obligation to, undertake to invest separately in respect of certain Members or Beneficiaries or certain Classes of Members or Beneficiaries of the Fund or in respect of different Classes for certain Members or Beneficiaries PROVIDED THAT any such investment is an authorised investment within the requirements of sub-clause 15(a) and is undertaken in accordance with an investment strategy formulated in accordance with the Relevant Requirements. The Trustee may impose such pre-conditions and conditions to the undertaking of such separate investment as the Trustee in its absolute discretion determines.

16. TRUSTEE'S POWERS OF MANAGEMENT**(a) Additional Powers**

In addition to the powers which it might have by law and which are otherwise granted to it by this Deed, the Trustee will have the following powers:

- (i) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (ii) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of this Deed and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (iii) to borrow money and to secure the repayment of it in any manner and upon any terms (including with or without security) which the Trustee may deem advisable PROVIDED THAT such borrowing will not breach the Relevant Requirements;
- (iv) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (v) to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund;
- (vi) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity will be in the name of the Trustee or, if the Trustee will so determine, in the name of the former Member;
- (vii) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (viii) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (ix) to the extent permitted under the Relevant Requirements, to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
- (x) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;
- (xi) to appoint a person who will be responsible for the chairing of meetings of the

Trustee and any other obligations which the Trustee vests in the person and, if required, to pay a fee or remuneration to such person in respect of such position;

- (xii) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its Directors or officers pursuant to Clause 18;
- (xiii) to receive distributions of both capital and income from any trust in which the Trustee has a beneficial interest (whether vested or contingent) and to allocate the distributions so received to the credit of such one or more of the members and in such proportions as the Trustee in its absolute discretion determines;
- (xiv) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

(b) **Trustee Interests**

All the powers and discretions conferred upon the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee of the Fund.

(c) **Trustee Discretion**

Subject to the limitations and restrictions contained in the Relevant Requirements, the Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed will have an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which will be final and binding PROVIDED THAT the Trustee will not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination.

(d) **Trustee Delegation**

Subject to the limitations contained in the Relevant Requirements, the Trustee may delegate to any person any of the powers, duties and discretions conferred on the Trustee under this Deed upon such terms and conditions as the Trustee will determine and the Trustee may vary, limit or revoke any such delegation.

17. LIMITATION OF LIABILITY

- (a) Neither the Trustee nor any of its Directors or officers shall be liable for anything done or omitted to be done in relation to the Fund PROVIDED THAT nothing in this clause will operate to exempt a person from, or indemnify the person against, liability:
 - (i) for breach of trust if the person fails to act honestly in a manner concerning fund or wilfully or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the person was required to exercise; or
 - (ii) for a monetary penalty under a civil penalty order under the Relevant Requirements;
 - (iii) to the extent that such an exemption would be inoperative under the Relevant

Requirements;

- (b) Without limiting the generality of the exemption from liability under sub-clause (a) above but subject to the stipulated proviso, the Trustee shall not incur any liability for:
- (i) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
 - (ii) any act or default of any former Trustee or any Director or officer of a former Trustee or of any Member;
 - (iii) any act or acts done or omitted to be done which the Trustee believed to be in conformity with any decisions of the Trustee;
 - (iv) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

18. **INDEMNITY OF TRUSTEE**(a) **Indemnity and Lien**

Subject to sub-clause (b) below, the Trustee and where applicable its Directors and officers shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them pursuant to this Deed or at law and the Trustee shall have a lien on and may use the moneys representing the assets of the Fund for the purposes of this indemnity. Without limiting the generality of the foregoing, this indemnity shall extend to:

- (i) any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled;
- (ii) the circumstances where the Trustee acts upon the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable ground to be expert in relation to the matters upon which they are consulted;
- (iii) the circumstances of the failure of any person or corporation to carry out any agreement made with the Trustee and to the circumstances of any act or omission on the part of such person or corporation; and
- (iv) the circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

(b) **Relevant Requirements**

Nothing in the clause will operate to exempt a person from, or indemnify the person against liability:

- (i) for breach of trust if the person fails to act honestly in a matter concerning the Fund or wilfully or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the person was required to exercise;

- (ii) for a monetary penalty under a civil penalty order under the Relevant Requirements;
- (iii) to the extent that such an exemption or indemnification would be inoperative under the Relevant Requirements.

19. REMUNERATION OF TRUSTEE

(a) Costs and Disbursements

The Trustee will be entitled to charge professional fees and to recover costs and disbursements incurred in respect of the provision of its services as Trustee of the Fund which fees, costs and disbursements will be debited to the Income Account or directly to the Accumulation Account or Pension Account of a Member as determined by the Trustee and which fees, costs and disbursements may reduce the Member's Vested Contributions.

(b) Fees Determined Annually

The fees charged (if any) by the Trustee will be determined at the commencement of each Fund Year. Prior notice of any changes which are intended to be made to the fees chargeable will be provided to the Members and any Employers by the Trustee.

(c) Reimbursement

The Trustee will be entitled to be reimbursed from the Fund for and in respect of the following expenses:

- (i) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debit tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (ii) such fees and expenses of the Auditor as the Trustee will consider reasonable;
- (iii) all and any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (iv) all fees, wages and expenses of any barrister, solicitor, accountant, Actuary, fund manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under this Deed;
- (v) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
- (vi) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
- (vii) all and any costs incurred in relation to an investigation of the Fund or in the Trustee seeking to comply with its obligations under the Relevant Requirements;
- (viii) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices.

20. APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS**(a) Actuary and Auditor**

The Trustee will if necessary appoint a person or firm to the following offices on such conditions as it determines:

- (i) an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (ii) an Auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Requirements.

(b) Administration Manager

The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations to act as the Administration Manager of the Fund to carry out some or all of the administration of the Fund, which appointment will be made on such terms and conditions as the Trustee considers appropriate.

(c) Investment Manager

The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations to act as the Investment Manager or Investment Managers of the Fund on behalf of the Trustee in regard to the purchase, sale, management, investment, administration or retention of the investments of the Fund PROVIDED THAT the Investment Manager undertakes in writing to hold the investments of the Fund together with income from those investments in trust for and on behalf of the Trustee AND PROVIDED THAT the person or company is qualified to act and the terms and conditions of appointment are in accordance with and compromise all the requirements of the Relevant Requirements.

(d) Consultants and Officers

In addition, the Trustee from time to time may appoint such other consultants and officers as it considers desirable for the proper management and administration of the Fund.

(e) Removal

The Trustee may remove from office any person or company appointed to any position under this Clause.

21. ACTUARIAL INVESTIGATIONS

In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed by the Trustee will be under no obligation to be bound by or to act upon the advice so provided unless required to do so by the Relevant Requirements.

22. CONTRIBUTIONS TO THE FUND**(a) Who May Make Contributions**

Subject to the consent of the Trustee and the following provisions of this clause, Contributions to the Fund may be received from a Member, an Employer or any other person or entity ("Permitted Entity") permitted under the Relevant Requirements to make contributions on behalf of a Member.

(b) Amount of Contributions

Subject to the following provisions of this clause and the Relevant Requirements, the Trustee may receive from the contributions referred to above such amount by way of Contributions as may be determined from time to time by each contributor.

- (c) **Designation of Class Entitlements**
Where a Member makes a Contribution or where an Employer makes a Contribution in respect of a Member, and the Member is a Member of more than one Membership Class the Member or the Employer shall designate in relation to that particular Contribution (or in respect of all future Contributions) which Membership Class or Classes each Contribution is being made to and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts applicable to that Class or those Membership Classes.
- (d) **Contributions by Employer or Permitted Entity**
Contributions payable by any Employer or any other Permitted Entity will be paid to the Trustee in such manner and at such times as agreed between the Trustee and that particular Employer or Permitted Entity.
- (e) **Interest on Contributions**
The Trustee may require an Employer to pay interest at a rate determined by the Trustee on any of its Contributions which are in arrears or may require an Employer or Member, as appropriate, to pay interest on any Member's Contributions which are in arrears.
- (f) **Contributions in Cash or Assets**
Any Contributions will be made to the Trustee within the Fund Year in respect of which it is paid or within such period as the Relevant Requirements may allow either in cash or by transfer of an asset or assets PROVIDED THAT the assets transferred must be authorised investments as set out in this Deed and the transfer must not be prohibited under the Relevant Requirements.
- (g) **No Obligations to Contribute**
In the absence of any agreement to the contrary neither a Member, an Employer nor a Permitted Entity will be under any obligation to make a Contribution to the Fund in respect of any Fund Year and a Member may remain a Member of the Fund notwithstanding a Contribution is not made in respect of that Member in respect of any Fund Year.
- (h) **Limitation on Commencing Contributions**
The Trustee will refuse to commence to accept Contributions to the Fund by or in respect of a Member if the Member is not in Part-Time Gainful Employment or Full-Time Gainful Employment or is not otherwise authorised to have Contributions made on the Member's behalf by the Relevant Requirements.
- (i) **Two Year Period**
Unless otherwise allowed under the Relevant Requirements, the Trustee will refuse to accept Contributions to the Fund by or in respect of a Member:
 - (i) if the Member:
 - A. has ceased for a continuous period of two years to be in Full-Time Gainful Employment or Part-Time Gainful Employment; but
 - B. has not retired from the workforce; or
 - (ii) if the Member has retired from the workforce.

- (j) **Level of Contributions**
The Trustee will not accept any Contribution or any Shortfall Component if the acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund or if the Commissioner so directs in accordance with the Relevant Requirements.
- (k) **Ineligible Contributions**
If the Trustee at any time ascertains that any Contribution or Shortfall Component has been accepted in breach of the provisions of this Clause, the Trustee will refund such Contribution or Shortfall Component within any time period which may be required by the Relevant Requirements, less any charge which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contribution or Shortfall Component and reasonable administration charges, and reduce the Benefits held for the Member in the Fund to those which would have been held if such Contribution or Shortfall Component had not been received.

23. TRANSFERS TO APPROVED BENEFIT ARRANGEMENTS

- (a) **Transfers Permitted**
Where a Member joins or is eligible to join any Approved Benefit Arrangement (the "Other Fund") and the Member requests that the whole or a part of the entitlement of the Member in the Fund be transferred to the Other Fund the Trustee may pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to such amount (the "Transferred Amount") as determined by the Trustee which amount reflects the whole or such part of the entitlement of the particular Member in the Fund at the time of the request for the transfer as the Trustee has determined be transferred.
- (b) **Effect and Method of Transfer**
 - (i) The receipt of the Transferred Amount by the proper officer of the Other Fund will be a complete discharge to the Trustee of all liabilities in respect of the Transferred Amount and the Trustee will have no responsibility to see to the application of the Transferred Amount.
 - (ii) Upon the completion of a payment or transfer in respect of a Member or Beneficiary under this Clause all the rights and interest of that Member or Beneficiary under this Deed (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstances affecting the Member or Beneficiary) in respect of the Transferred Amount will be entirely extinguished.
- (c) **Roll Over**
 - (i) Where a Member or former Members wishes to effect a Roll Over Payment in respect of all or any of the entitlement of the Member in the Fund, the Member will:
 - A. make a request to the Trustee in writing nominating the Approved Benefit Arrangement to which the Roll Over Payment is to be made and the amount to be applied as the Roll Over Payment or the percentage of the Member's Accumulation Account or Pension Account to be applied as the Roll Over Payment; and
 - B. complete and execute a notification of the Roll Over Payment or such other documentation as will be required by the Tax Act to enable the Roll

Over Payment to be effected to the Approved Benefit Arrangement in accordance with the Relevant Requirements.

(ii) The Trustee may transfer a Member's Benefit to an Eligible Rollover Fund in accordance with the Relevant Requirements.

(d) **Preserved Payment Transfers**

Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Other Fund the Trustee shall ensure that the provisions of the Other Fund provide that if the Member wishes to leave the Other Fund the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Relevant Requirements.

24. TRANSFERS FROM APPROVED BENEFIT ARRANGEMENTS

(a) **Takeover or Transfer of Benefits**

Where a Member is or was a member of or is or was the beneficiary under any other Approved Benefit Arrangement the Trustee may by resolution take over or acquire by transfer from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of such Approved Benefit Arrangement or the interest of any person who is a participant or former participant of that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of such Approved Benefit Arrangement at the time of takeover or acquisition.

(b) **Rights and Entitlements of Member in Transferred Benefits**

The Trustee will hold any such amounts transferred in accordance with paragraph (a) above as part of the Fund and reflect such equivalent rights, entitlements and interests in the particular Member's Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Member will be deemed to have become a Member of the Fund on the date the Member became a member of the Approved Benefit Arrangement from which the Benefit was transferred.

25. MONEYS OWING TO FUND OR AN EMPLOYER

Where a Member owes any moneys to the Fund or to an Employer (including costs of any prosecution or civil proceedings together with interest on those moneys at a rate determined by the Trustee) or if the Member has committed any fraud upon an Employer or is guilty of dishonesty, defalcation or serious misconduct such that moneys are owing to any Employer, the Trustee may debit the Accumulation Account of the Member for a sum equivalent to the said moneys owing from that part of the Benefit of the Member which would otherwise be payable and which does not represent Member's Vested Contributions or a Preserved Payment Benefit and the Trustee will:

- (a) if the said moneys are owed to the Fund, retain them in the Fund; or
- (b) if the said moneys are owed to an Employer, retain those moneys in the Fund or pay them to that Employer or as that Employer directs

PROVIDED such exercise of the lien by the Trustee is permitted by the Relevant Requirements.

26. FORFEITURE OF BENEFITS

(a) **Conditions of Forfeiture**

Any Member or Beneficiary or after the death of a Member, any of the Dependants or the

legal personal representative of the Member:

- (i) who assigns or charges or attempts to assign or charge any Benefit Entitlement;
- (ii) whose interest in any Benefit Entitlement, whether by the Member's or Beneficiary's own act, operation of law, an order of any Court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (iii) who is insolvent or who commits or has committed an act of bankruptcy;
- (iv) who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit Entitlement or who, in the opinion of the Trustee is incapable of managing the person's affairs;
- (v) who is a former Member who cannot be located and whose Dependents cannot be located by the Trustee during a period of 2 years and after the Trustee has made all reasonable enquiries within that time as to the whereabouts of the Member or the Dependents of the Member; or
- (vi) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation,

will, to the extent permitted by law and under the Relevant Requirements, forfeit entitlement to any Benefit Entitlement held in the Fund at that time by that person.

(b) **Accumulation Account Residue**

Any Member, former Member or Beneficiary who has been paid all Benefits which the Trustee considers should be paid pursuant to the provisions of this Deed and who still has a residual amount standing to the credit of their Accumulation Account will forfeit such amount and such amount will be dealt with as a forfeited Benefit.

(c) **Forfeiture Account**

- (i) The Trustee will have power at any time to establish a Forfeiture Account of the Fund and will transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the provisions of this Deed.
- (ii) Whilst any moneys are held in the Forfeiture Account they will not form part of any Accumulation Account and any income derived by the Fund on the moneys held in the Forfeiture Account will be credited back to the Forfeiture Account.
- (iii) The Forfeiture Account will be applied in accordance with the remaining provisions of this Clause.

(d) **Application of Forfeited Benefits**

Subject to clause 25, the Trustee will hold upon trust and pay or apply any amounts which have been forfeited and are held in the Forfeiture Account in any one or more of the following ways:

- (i) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;
- (ii) to the trustee of the estate of the former Member;

- (iii) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (iv) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- (v) for the provision to other Members of the Fund or their Dependants of additional Benefits on a basis that does not breach the Relevant Requirements and is reasonable having regard to all the circumstances;
- (vi) for payment to such of the Employers as the Trustee in its absolute discretion considers appropriate;
- (vii) for any other purpose approved in writing by the Commissioner,

PROVIDED THAT where a Member remains in the employment of an Employer any payments made to that Member will be limited to the relief of hardship of the Member or of the Dependants of the Member and PROVIDED FURTHER THAT the Trustee will not apply forfeited amounts in breach of the Relevant Requirements.

(e) **Readjustment**

Where a forfeiture of a Benefit Entitlement occurs under this Clause, and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect the Member, the Trustee may readjust any rights, entitlements or interests of the Member in the fund and may provide the Member with such rights or entitlements as the Trustee considers appropriate PROVIDED THAT the rights or entitlements will not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

(f) **Severability**

If any part of this Clause should be construed as illegal, invalid or void, the legality and validity of the remaining parts of this Clause will not be affected and the illegal, invalid or void part will be deemed to be deleted.

27. PENSION ACCOUNT

(a) **Application to Convert Lump Sum to Pension**

On the written application of a Member and subject to the Relevant Requirements, the Trustee may pay a Pension to the Member in accordance with Clause 28 in lieu of the whole or a portion of any lump sum Benefit or transferred Roll Over Payment which is otherwise payable to the Member.

(b) **Establishment of Pension Account**

Where a Member has made an application under sub-clause (a) above and the Trustee determines to pay all or any part of the Benefit to a Member as a Pension, the Trustee must establish a Pension Account in respect of the Member to which the Account the Trustee will transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.

(c) **Operation of Pension Account**

- (i) There will be credited to the Pension Account of a Pensioner such amounts as the Trustee from time to time determines and as are permitted or required by the Relevant Requirements;

- (ii) There will be debited to the Pension Account of a Pensioner such amounts as the Trustee from time to time determines and as are permitted or required by the Relevant Requirements;
- (iii) The Trustee may segregate or set apart the assets which represent each particular Pension Account for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions and may constitute the segregated assets as segregated current and non-current pension assets within the meaning of Section 273A and Section 273B of the Tax Act.

28. PENSION PAYMENT CONDITIONS

(a) **Method of Payment**

Where any Benefit payable from the Fund is payable in the form of a Pension, the Pension will be payable from the Pension Account of the Pensioner in such amount and manner and on such conditions and dates as the Trustee determines after consultation with the Pensioner, and as is permitted by the Relevant Requirements, subject to the following:

- (i) the amount of the Pension in any year will fall within the parameters of the maximum and minimum limits set out in the Relevant Requirements;
- (ii) the Pension will be paid at least annually;
- (iii) unless otherwise permitted by the Relevant Requirements, the Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner or on the death of a Reversionary Beneficiary and neither the capital value of nor the income from the Pension can be used as security for a borrowing.

(b) **Total of Member Account**

Where a Benefit is payable in the form of a Pension or where the Trustee purchases an Annuity on behalf of a Member, then the instalments of such Pension or the purchase price of such Annuity will not exceed the amount of the credit in the particular Account of the Member or Pensioner nor the maximum amount permitted to be paid under the Relevant Requirements.

(c) **Pension Increase**

Any Pension payable pursuant to the provisions of this Deed will, if required by the Relevant Requirements and agreed to by the Trustee, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases PROVIDED HOWEVER that any increase will be at least the minimum required by the Relevant Requirements in respect of the type of Pension being paid.

(d) **Reversionary Beneficiary**

After the death of a Pensioner who was at the time of death still in receipt of Pension, the Trustee may in its discretion determine to pay to the Reversionary Beneficiary a Pension or a lump sum Benefit in an amount that does not breach the Relevant Requirements.

(e) **Death of a Pensioner**

If a Pensioner dies whilst there is still an amount standing to the credit of the Pension Account and not Reversionary Beneficiary has been nominated, the balance of the Pension Account will be dealt with in accordance with the provisions of Clause 31 or, if such dealing is not in accordance with the Relevant Requirements, in accordance with clause 26

a though it were a forfeited Benefit or as otherwise permitted by the Relevant Requirements.

29. COMMUTATION OF PENSION

On the written application of a Pensioner or Reversionary Beneficiary, the Trustee may commute to a lump sum Benefit and pay to the applicant the whole or any part of a Pension payable from the Fund to such Pensioner or Reversionary Beneficiary as applicable PROVIDED THAT:

- (a) the commutation of the Pension and payment of the lump sum Benefit is permitted by the Relevant Requirements and satisfies any other relevant requirements under this Deed;
- (b) the amount of the commuted Benefit including the value of any remaining Pension payable will not be in breach of the Relevant Requirements;
- (c) where any amount remains in the Fund after the entitlement of all Pensioners and Reversionary Beneficiaries have been paid out then the amount so remaining will be dealt with in accordance with clauses 26 as though it were a forfeited Benefit;
- (d) if part only of a Pension is commuted, the Trustee will reduce by such amount as it deems appropriate the amount of any Pension payable to the Pensioner; and
- (e) the commutation would not, in the opinion of the Trustee, be to the disadvantage of the Fund, the Employers, the remaining Members, Pensioners or Reversionary Beneficiaries.

30. TRANSFER IN SPECIE

(a) **Transfer of Policy**

Where a Member or a Beneficiary is entitled to be paid a Benefit or the Trustee in its discretion determines to pay a Benefit to a Member, a Beneficiary or the Dependants of the Member and the same includes any interest in a Policy of any kind on the life of the Member or Beneficiary the Trustee may in its absolute discretion and in lieu of surrendering such Policy assign the same to such Member or Beneficiary or to the Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of such Policy as at the date of assignment will be debited as a payment to the Member or Beneficiary in the assessment of any entitlement as reflected by the Member's or Beneficiary's Accumulation Account or Pension Account and neither the Trustee nor an Employer will be liable to pay any further premiums which may become due and payable under the Policy as from the date of such assignment.

(b) **Transfer of Investments**

The Trustee may with the consent of a Member or a Beneficiary to whom a Benefit is payable transfer investments of the Fund of equivalent value to such Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed PROVIDED HOWEVER that the Trustee is satisfied that such transfer is permitted by the Relevant Requirements.

(c) **No Beneficial Interest**

With the exception of the provisions of this Clause and sub-clause 12(g), no Member or Beneficiary will have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole whilst such asset or assets remain subject to the provisions of this Deed.

31. **PAYMENT OF BENEFITS ON DEATH**

- (a) **Benefit payable on the death of a Member leaving Dependants**
Where this Deed provides for the payment of a Benefit on the death of a Member, former Member or Beneficiary leaving Dependants, the Trustee may pay or apply the Benefit to or for the benefit of the Nominated Dependant of the former Member but in the event that there is no Nominated Dependant or the Trustee considers in its absolute discretion that it is inappropriate or inequitable to pay the Benefit to any Nominated Dependant the Trustee will pay or apply the Benefit to or for the benefit of such one or more of the former Member's Dependants in the form of a lump sum in the manner, at the times, and in such proportions between them, if more than one, as the Trustee may from time to time in its discretion determine.
- (b) **Benefit payable on the death of a Member leaving no Dependants**
Where this Deed provides for the payment of a Benefit on the death of a Member or former Member leaving no Dependants, the Trustee will pay the Benefit to the legal personal representative of the Member or former Member, or if there is not legal personal representative, pay or apply the Benefit to or for the benefit of such Relatives of the former Member as appear to the Trustee to be entitled to share in the estate of the Member or former Member PROVIDED THAT if there be no such Relatives, and subject to complying with the Relevant Requirements in relation to Members' Withdrawal Benefit, the Benefit will be absolutely forfeited and will remain in the Fund to be dealt with in accordance with Clause 26.
- (c) **Death Prior to Benefit Payment**
If a Member or former Member dies before payment of a Lump Sum to which he/she has become entitled, the Trustee may pay that amount in accordance with sub-clauses (a) and (b) above.

32. **PAYMENT OF BENEFITS**

- (a) **Address for Benefits**
The Trustee may forward Benefit payments to the postal address or bank account of the Member or Beneficiary last notified to the Trustee or to such other place as the Trustee determines.
- (b) **Notification of Address**
Every person to whom a Benefit is payable will (except where no further Benefit is payable from the Fund) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Beneficiary changes address at any time of:
- (i) the place of residence of the person and the full postal address of that residence; and
- (ii) the bank account (if any) to which the person requests that the Benefit be paid.
- (c) **Receipt for Benefits**
Any person to whom a Benefit is payable will, if requested, furnish the Trustee with a receipt and release in a form from time to time required by the Trustee.
- (d) **Claims**
- (i) Prior to payment of a Benefit to any person the Trustee will notify in writing such persons as the Trustee believes may have an entitlement to or interest in the Benefit of the period within which the person may seek to claim an entitlement to

the Benefit.

- (ii) Where a person has satisfied the Trustee that he/she is entitled to the payment of a Benefit under this Deed, the Trustee will notify in writing any person to whom a notice has been sent under paragraph (i) above of any period within which the person may object to the payment of the Benefit and may defer the payment of the Benefit until that period for objections has elapsed.
- (iii) Where a person has failed to notify the Trustees of a claim of the intention to make a claim within the period determined by the Trustee under paragraph (ii) above, no payment will be made to the person unless otherwise permitted under this Deed and the Relevant Requirements.

(e) **No Personal Claim**

No Member or person claiming through a Member or on behalf of a Member or as the Dependant of a Member will be entitled to require payment of that Member's interest in the Fund except as may be provided in this Deed.

(f) **Payment to Others on Behalf of Beneficiaries**

When any Beneficiary is under the age of 18 years or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary in such manner and whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

(g) **Preservation Conditions**

Notwithstanding any other provision of this Deed:

- (i) no Member or Dependant of a Member will be entitled to receive any Benefit which is a Preserved Payment Benefit prior to the Member retiring from Gainful Employment at or after reaching the age of 55 years otherwise than in the event of Total and Permanent Disablement or death of the Member or in other circumstances permitted by the Relevant Requirements;
- (ii) any Pension or Annuity that a Member or the Dependents of a Member have a right to receive from the Fund must commence to be paid, and any other Benefits that a Member or the Dependents of a Member have a right to receive from the Fund are to be paid not later than the 65th birthday of the Member or at such other time as is permitted or required by the Relevant Requirements;
- (iii) any Preserved Payment Benefits held by the Trustee which are unable to be paid out to the Member may, at the discretion of the Trustee, be dealt with in accordance with clause 23, or be retained in the Fund subject to clause 49.

33. PAYMENT OF TAXATION AND LEVIES

(a) **Tax on Benefits**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, will deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee will consider is required to be deducted) from it.

(b) **Tax on Contributions and Shortfall Components**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate

organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member. Where such Taxation has been deducted from a Contribution or Shortfall Component a reference to the crediting of the Contribution or Shortfall Component to an Accumulation Account will mean the crediting of the net Contribution or Shortfall Contribution after the deduction of such Taxation.

(c) **Payment to Relevant Authority**

- (i) The Trustee will pay all Taxation which is due and payable by the Fund, and which is not being transferred with the agreement of the Trustee to an Insurer or otherwise transferred as provided under the Tax Act together with any Levy payable by the Fund to the relevant authorities within the required time for payment.
- (ii) The Trustee may deduct any Taxation payable in relation to the taxable income of the Fund not otherwise deducted under this Clause from the Income Account or the Accounts of members.

34. POLICIES OF ASSURANCE

(a) **Trustee to effect Policy**

- (i) The Trustee exercising its investment powers under this Deed may effect separate Policies and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another.
- (ii) The Trustee will not be responsible or liable to a Member, a Member's legal personal representative or the Dependant's of a Member should the Trustee determine not to exercise the power to effect such Policy or Policies.

(b) **Compulsory Policy**

Notwithstanding anything in sub-clause (a) above if the Trustee has informed a Member that a Policy of a specified type will be effected (and the Member has not requested the Trustee in writing not to effect such Policy) or if a Member requests the Trustee in writing to effect a Policy of a specified type (and the Member has not withdrawn such request) and the Trustee agrees to effect such Policy on the basis that to do so is in the best interests of the Member or the Dependents of the Member, the Trustee must effect such Policy if it is able to do so.

(c) **Premiums for Policy**

The premiums for any Policy effected may be debited to the Income Account or directly to the Accumulation Account of the Member in respect of whom the Policy is effected or alternatively in such proportions amongst other Members as the Trustee considers to be equitable which premiums may be debited against the Member's Vested Contributions.

(d) **Limitations on Policy**

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member or Beneficiary then notwithstanding the Benefits which may be payable pursuant to this Deed in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member or Beneficiary as it determines.

(e) **Endowment or Whole of Life Policy**

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life Policy, then the Member's Vested Contributions will mean in relation to those contributions and any net earnings which would but for this sub-clause be applicable to them, the surrender value of such endowment or whole of life Policy.

35. PARTICIPATING EMPLOYERS

In the event that any person, firm or corporation ("new entity");

- (a) makes application to the Trustee to be admitted to make Contributions to the Fund on behalf of Members or persons who wish to become Members; and
- (b) the Trustee consents to the admission of the new entity as a Participating Employer; and
- (c) the new entity executes this Deed in the space provided in Schedule C or, if required, executes a deed on terms which are acceptable to the Trustee in respect of such application,

then such new entity will become a Participating Employer subject to the terms, conditions and provisions of this Deed and subject to any special conditions stipulated by the Trustee and the entry of the details of the Participating Employer by the Trustee in Schedule C will be conclusive of the due admission of the Participating Employer to the Fund.

36. OTHER SUPERANNUATION OBLIGATIONS

Subject to clause 39, where at any time an obligation, whether compulsory or otherwise, is imposed upon an Employer to make contributions to a superannuation fund providing retirement, death or disablement benefits in respect of Members of the Fund then the Employer may, with the consent of the Trustee, reduce its Contributions to the Fund by the amount of the contribution being made to the other fund in respect of those Members (who are members of the other fund) and the Employer may consult the Actuary in respect of the amount of the reduction in Contributions to be made to the Fund.

37. TERMINATION OF EMPLOYER'S CONTRIBUTIONS(a) **Cessation on Insolvency**

Subject to clause 39, an Employer will cease to be an Employer for the purposes of the Fund and Contributions to the Fund will terminate from the particular Employer on the date that:

- (i) a deed of appointment placing the Employer in receivership or under official management is executed by the appointor of that receiver or official manager;
- (ii) a resolution of its members or an order of a Court places the Employer in liquidation; or
- (iii) the Employer permanently terminates its Contributions to the Fund by notice in writing to the Trustee.

(b) **Members' Contributions Terminated**

No Contribution will be made by a Member without the consent of the Trustee where the Employer of the Member has terminated its Contributions in respect of that Member under sub-clause (a) above.

(c) **Benefits Held for Members**

In the event that Contributions by an Employer cease in the circumstances described in sub-clause (a) above and the Member does not continue to make Contributions to the Fund then the Trustee will deal with all Benefits in accordance with the existing provisions of the Deed.

38. TRANSFER OF PARTICIPATING EMPLOYER'S BUSINESS

If a participating Employer (the "Former Employer") is amalgamated with or disposes of its undertaking to another Participating Employer (the "New Employer"), Contributions will be deemed not to have terminated and the Members who are Employees of the Former Employer will become Employees with the New Employer and the New Employer may make future Contributions in respect of those Members.

39. RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER

If an Employer is reconstructed, goes into liquidation for the purpose of reconstruction, is merged or amalgamated with another employer or disposes of all or the majority of its undertaking, the Trustee may:

- (a) enter into a deed of adoption with its successor as an Employer with the object of carrying on a Complying Superannuation Fund either under this Deed or any similar deed or rules on such terms and conditions as the Trustee considers to be reasonable and which protects the interests of the Members; or
- (b) transfer some or all of the assets of the Fund representing the assets applicable to Members who were Employees of the Former Employer to a Complying Superannuation Fund conducted by a new employer in accordance with and subject to the provisions of Clause 23 in respect of some or all Members or former Members; or
- (c) continue to operate the Fund for the benefit of any Members still employed by the former Employer; or
- (d) terminate the Fund in accordance with Clause 41.

40. VARIATION OF TRUST DEED

The provisions of this Deed including this Clause may be added to, amended, altered, modified, rescinded or varied (the "Variation") from time to time by the Trustee which Variation may be prospective or retrospective and which will be effected on the following basis:

- (a) The Variation will be:
 - (i) by oral declaration or written resolution of the Trustee and a certified copy of minutes of a meeting of the Trustee confirming any such oral declaration or a certified copy of any such written resolution will be furnished to the Commissioner if required by the Relevant Requirements; or
 - (ii) by Deed executed by the Trustee and a copy of such Deed will be forwarded to the Commissioner if required by the Relevant Requirements.
- (b) On any Variation being effected, the Trustee will as soon as practicable thereafter advise the Members whose entitlements or rights are affected by the Variation in writing of the

nature and purpose of the Variation and the effect on their entitlements or rights.

- (c) No Variation will have the effect of:
- (i) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Fund which have arisen prior to the Variation being effected;
 - (ii) reducing the amount of an entitlement other than the entitlement referred to in paragraph (i) above that is or may become payable in relation to a period before the date of Variation,
- unless:
- A. the reduction is required because of, and does not exceed the value of any Taxation payable on the taxable income of the Fund; or
 - B. the reduction is required to enable the Fund to comply with the Relevant Requirements; or
 - C. other than in respect of the Member's Vested Contributions the Member so affected consents in writing to the reduction; or
 - D. the Commissioner consents in writing to the reduction.
- (d) **Further limitation on Variation**
If so required under the Relevant Requirements, this Deed cannot be varied in such a way that:-
- (i) a person or a body other than a Constitutional Corporation would be eligible to be appointed as Trustee unless the Deed provides, and continues to provide after the amendment is made, that the Fund has, as its sole or primary purpose, the provision of old-age pensions; or
 - (ii) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Deed provides, and will continue to provide after the amendment is made, that the Trustee must be a Constitutional Corporation and the Trustee is, in fact, a Constitutional Corporation.

41. WINDING UP OF FUND

- (a) **Election to Terminate**
The Trustee may elect to wind up the Fund at a certain date (the "Termination Date") in the following circumstances:
- (i) in the circumstances set out in sub-clause 37(a) above;
 - (ii) if there are no further Members remaining in the Fund; or
 - (iii) if the Trustee otherwise determines for any reason that the Fund should be wound up.
- (b) **Procedure on Winding Up of Fund**
Where the Fund is to be wound up the Trustee will:

- (i) give written notice to each Employer and Member that the Fund is to terminate on the Termination Date;
 - (ii) arrange to pay or transfer Benefits to Members, former Members and Beneficiaries in accordance with sub-clause (c) below, after deducting from the assets of the Fund the costs of administering and winding up the Fund.
- (c) **Exhaustion of Fund**
Subject to sub-clause 32(g), the Trustee will pay the following Benefits in the following order to the extent that the assets of the Fund permit:
- (i) Benefits to which Members, former Members or their Dependants who have not been paid to a Benefit immediately prior to the Termination Date are entitled at the Termination Date;
 - (ii) the provision of additional Benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion considers appropriate;
 - (iii) payment to such of the Employers as have made Contributions to the Fund as the Trustee in its absolute discretion determines.

DIVISION C

DETERMINATION AND PAYMENT OF BENEFITS

42. MEMBERSHIP CLASSIFICATION

- (a) **Classes of Members**
 - (i) Irrespective of which of sub-clauses 43(b) or (c) applies, there will be three Classes of Membership of the Fund, designated: "A" Membership Class, "B" Membership Class, and "C" Membership Class.
 - (ii) The Trustee will have the power to create such other Membership Classes with such rights, entitlements, conditions of eligibility and Benefits as the Trustee determines.
- (b) **Original Class**
 - (i) All Members who have joined the Fund as persons who are self-employed or persons who are unsupported by an Employer, within the meaning of the Tax Act, or persons otherwise nominated by their Employer and accepted by the Trustee shall become "C" Class Members and shall remain "C" Class Members unless and until the Trustee makes a written nomination for a Member to come a Member of an alternative Class when the Member shall become a Member of the Class into which the Member is nominated PROVIDED HOWEVER that the Member shall also remain a "C" Class Member unless the Trustee nominates otherwise and the Member consents in writing to the Trustee's nomination.
 - (ii) All Members who have become Members as a result of being employed by an Employer which is admitted to make Contributions to the Fund pursuant to Clause 35 and who are not otherwise admitted as "C" Class Members under sub-clause (i) above shall become either "A" Class Members or "B" Class Members and shall remain Members of such Class unless and until otherwise nominated by the

Trustee with the consent of their Employer to become a Member of an alternative Class when the Member shall become a Member of the Class into which the Member is nominated PROVIDED HOWEVER that the Member shall also remain a Member of the "A" or "B" Class, as appropriate, unless the Trustee nominates otherwise.

(c) **Reclassification**

A Member shall be capable of reclassification to any other Class at any time PROVIDED THAT any Withdrawal Benefit forming part of the Member's Accumulation Account which have accumulated during such time as that Member was a Member of another Class shall be retained as an entitlement of the Member to the extent that the entitlement was a Withdrawal Benefit at the time the Member became a Member of the other Membership Class when such reclassification took place.

(d) **Transfer of Accumulation Account**

Upon the reclassification of a Member as a Member of another Class the Trustee may, with the consent of the Employer, transfer all or any of the Member's other Accumulation Accounts to the new Membership Class subject to the proviso contained in sub-clause (c) above.

(e) **Designation of Class**

If a Member is reclassified to another Membership Class and that Member remains a Member of more than one Class then, at the time at which any Contribution to the Fund is made by the Employer or the Member, the Employer or the Member making the Contribution will designate the Class to which the Contribution is attributable and may further designate that all further Contributions will be credited to that Class PROVIDED THAT in the event that the Employer or the Member makes no designation the Trustee at its discretion will make such designation.

(f) **Nomination at Discretion of Trustee and Employer**

The Trustee and the Employer will have absolute and unfettered discretion as to the making of a nomination and the granting of a consent to a Member to become a Member of a different Class or more than one Class and the Trustee will not be required to give any reasons for its decision.

43. BENEFITS PAYABLE ON RETIREMENT

(a) **Either Lump Sum or Pension to Apply**

- (i) Sub-clause (b) below will apply to the exclusion of sub-clause (c) where the Trustee of the Fund is a Constitutional Corporation (and has not made a conversion under paragraph (iii) below).
- (ii) Sub-clause (c) below will apply to the exclusion of sub-clause (b) where the Trustee of the Fund includes an Individual Trustee or where the Trustee has made a conversion under paragraph (iii) below.
- (iii) Where the Trustee is a Constitutional Corporation, the Trustee may, by notice in writing served upon the Members, convert the Fund from a lump sum to a pension fund by declaring that sub-clause (b) below will cease to operate and sub-clause (c) below will commence to operate from the date specified in the notice.

(b) **Lump Sum Payment**

- (i) Where a Member of any Class:

- A. who is a self-employed person Retires from Gainful Employment;
- B. Retires from Employment with an Employer and the Trustee determines to pay a Benefit at that time;
- C. becomes in the opinion of the Trustee Totally and Permanently Disabled;
or
- D. satisfies the Relevant Requirements for the payment of Benefits notwithstanding that the Member continues in employment,

then such Member will be paid the amount standing to the credit of the Accumulation Account of the Member as at the date upon which payment is made.

- (ii) Where a Member of any Class is eligible for payment of a Benefit in accordance with paragraph (i) above and the Trustee determines to pay the Benefit as a Pension, such Pension will be paid in accordance with the provisions of Clauses 27 and 28.

(c) **Life Pension Benefit**

- (i) Where a Member of any Class:
 - A. who is a self-employed person Retires from Gainful Employment at or after Normal Retirement Age;
 - B. Retires from Employment with an Employer at or after Normal Retirement Age and the Trustee determines to pay the Benefit at that time;
 - C. satisfies the Relevant Requirements for the payment of Benefits notwithstanding that the Member continues in Gainful Employment,

then such Member will be paid a Life Pension.

- (ii) The Trustee may determine to acquire an Annuity in the name of the Member in order to provide a Life Pension to the Member under paragraph (i) above in which case the total amount applied for the purchase of such Annuity will not exceed the amount standing to the credit of the Member's Accumulation Account as at the date upon which the Annuity is purchased.

- (iii) Where a Member becomes entitled under paragraph (i) above to the payment of a Life Pension, the Member may, by written notice to the Trustee, elect to commute part or all of that Pension to a lump sum Benefit, and may nominate:

- A. that the Benefit be paid as a lump sum Benefit; or
- B. that the Benefit be paid as a Pension in accordance with Clauses 27, 28 and 29,

in which case, the total amount of the lump sum Benefit or of the amount transferred to the Member's Pension Account established under Clause 27 will not exceed the amount outstanding to the credit of the Member's Accumulation Account as at the date upon which the lump sum Benefit is paid or the transfer is made.

44. **DISABLEMENT**(a) **Total and Permanent Disablement**

Irrespective of which of sub-clauses 43(b) or (c) applies, in the event that a Member of any Class will become in the opinion of the Trustee Totally and Permanently Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion will be paid by the Trustee:

(i) **Lump Sum Payment**

a lump sum Benefit equal to the full amount standing to the credit of the Accumulation Accounts of the Member as at the date upon which payment is made; or

(ii) **Pension Payment**

where a Member is eligible for payment of a Benefit in accordance with sub-clause (i) above and the Trustee determines to pay the Benefit as a Pension, such Pension will be payable in accordance with the provisions of Clauses 27 and 28.

(b) **Temporary Total Disablement**

(i) A Member will be recognised as having become totally disabled (but not Totally and Permanently Disabled) by the Trustee if:

A. the Member is disabled as a result of illness, accident or injury which commences at or prior to the Member attaining the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier); and

B. as a result of the said illness, accident or injury the Member has been continuously absent from the Member's business, trade, profession, vocation, calling, occupation or employment for the eligibility period contained in any Policy effected in respect of the Member; and

C. the Trustee has effected a Policy with the Insurer to cover total disablement; and

D. the Trustee after consultation with the Insurer is satisfied that the Member is disabled within the meaning of the definition of temporary total disablement agreed upon by the Trustee and the Insurer; and

E. the Trustee expects the Member's disablement to be temporary.

(ii) In the event that the Trustee receives an income Benefit under a Policy effected in respect of temporary disablement of the Member then the Member will be paid (to the extent permitted by the Relevant Requirements) an income Benefit of an amount equal to the amount payable to the Trustee as a result of the temporary total disablement of the Member under the Policy and in the manner specified in the Policy.

(iii) Payment of Contributions to the Fund by the Member (if any) will be suspended during such time as any income Benefit is payable.

(iv) The Member will continue to be a Member of the Fund during the period that the Member is temporarily totally disabled and for the eligibility period as is specified in the Policy in respect of the temporary total disablement and the aggregate of those periods will for the purpose of the Fund be deemed to be included in the

Member's period of Membership of the Fund.

- (v) The income Benefit under this Clause will cease to be payable in accordance with the conditions applicable to the Policy.

45. EARLY RETIREMENT FROM EMPLOYMENT

Irrespective of which sub-clauses 43 (b) or (c) applies, in the event of a Member of any Class, who is a self-employed person, Retires from Gainful Employment prior to the Normal Retirement Age or Retires from Employment with an Employer prior to the Normal Retirement Age and the Trustee determines to pay the Benefit at that time, then the Trustee shall pay to the Member the following amounts:

- (a) **"A" Class Membership**
In respect of a Member's "A" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:
- (i) the Member's Withdrawal Benefit;
 - (ii) such further portion of the balance of the Member's "A" Class Accumulation Account as the Employer will determine with the consent of the Trustee.
- (b) **"B" Class Membership**
In respect of a Member's "B" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:
- (i) the Member's Withdrawal Benefit;
 - (ii) an amount equivalent to a percentage of the balance of the Member's "B" Class Accumulation Account as at the date of payment of such amount being the higher amount represented by the percentage options set out in the Schedule D attached to this Deed;
 - (iii) such further portion of the balance of the Member's "B" Class Accumulation Account as the Employer will determine, with the consent of the Trustee.
- (c) **"C" Class Membership**
The full amount standing to the credit of the Member's "C" Class Accumulation Account as at the date of payment.
- (d) **Pension Payments**
Where a Member is eligible for payment of a Benefit in accordance with sub-clauses (a), (b) or (c) above and the Trustee determines to pay the Benefit as a Pension, such Pension will be paid in accordance with the provisions of Clauses 27 and 28.

46. PAYMENT ON DEATH

Irrespective of which of sub-clauses 43 (b) or (c) applies, on the death of a Member of any Class whilst still a Member the Trustee will pay the full amount standing to the credit of the Member's Accumulation Account as at the date upon which payment is made in accordance with the provisions of Clause 31.

47. PAYMENT OF NON-PRESERVED AMOUNTS

Notwithstanding any other provision of this Deed and subject to the Relevant Requirements:

- (a) a Member may elect at any time to withdraw the whole or any part of the Non-Preserved Amount of that Member by giving notice to the Trustee in such form as may be determined by the Trustee from time to time;
- (b) the minimum Non-Preserved Amount which may be withdrawn by a Member pursuant to paragraph (a) will be determined by the Trustee and notified to the Members of the Fund.

48. INCREASES IN BENEFITS

Irrespective of which of sub-clauses 43(b) or (c) applies, in circumstances where a Member ceases to be a Member of the Fund, the Trustee may determine to pay some part of the Equalisation Account which the Trustee considers represents the interests of that Member in that Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

49. RETENTION OF BENEFIT IN FUND

Irrespective of which of sub-clauses 43(b) or (c) applies, where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable under this Division in the Fund until:

- (a) the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;
- (b) the Member dies in which event it will be paid in accordance with Clause 31;
- (c) payment of the Benefit is required in accordance with the provisions of this Deed or the Relevant Requirements; or
- (d) the Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary,

whichever will first occur and the amount then payable will be the Benefit standing to the credit of that Member's or Beneficiary's Accumulation Account as at the date of payment PROVIDED HOWEVER that all Benefits must be paid at such time and in such manner as will be required by the Relevant Requirements.

50. LIMITATION ON BENEFITS

Notwithstanding any other provision of this Deed, the Trustee will not pay out any Benefits to Members, Dependents or Beneficiaries where such payment would cause the fund to breach the Relevant Requirements.

51. BENEFITS SECURED

The rights of the Members and their Dependents to receive Benefits payable pursuant to this Deed will be fully secured within the meaning of the Relevant Requirements.

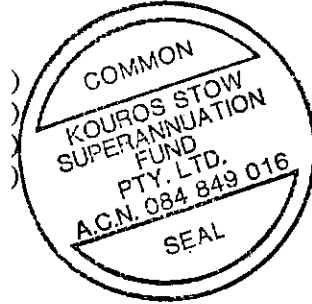
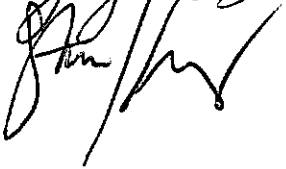
IN WITNESS WHEREOF the parties have executed this Deed on the date set out in Schedule A(1).

The Common Seal of KOUROS STOW SUPERANNUATION
FUND PTY LTD (ACN. 084 849 016) was hereunto affixed
in accordance with its Articles of Association in the
presence of:

Director:



Secretary:



SCHEDULE A

- (1) DATE OF DEED: The 22ND day of OCTOBER 1998
- (2) PRINCIPAL: KOUROS STOW SUPERANNUATION FUND PTY LTD
(ACN. 084 849 016)
the registered office address of which is situate at BKR Walker Wayland,
Accountants, Level 3, 60 Collins Street, Melbourne.
- (3) TRUSTEE: KOUROS STOW SUPERANNUATION FUND PTY LTD
(ACN. 084 849 016)
the registered office address of which is situate at BKR Walker Wayland,
Accountants, Level 3, 60 Collins Street, Melbourne.
- (4) NAME OF FUND: KOUROS STOW SUPERANNUATION FUND
- (5) DATE OF ESTABLISHMENT OF FUND: The 22ND day of OCTOBER 1998
- (6) PROPER LAW GOVERNING FUND: Victoria.

SCHEDULE B

**APPLICATION FOR MEMBERSHIP
CONFIDENTIAL**

TO: The Trustee

I, the undersigned person, being eligible hereby apply for admission to membership of the Fund. I agree and undertake as follows:

1. I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time.
2. I will upon request make full disclosure in writing of any information required by the Trustee in respect of my membership of the Fund including my medical condition.
3. I understand the terms and conditions of the Trust Deed and more particularly the terms and conditions of Divisions B and C of the Deed concerning Benefits payable.
4. I will notify the Trustee if at any time I cease to be Gainfully Employed as defined in the Deed.
5. I agree to the Trustee acting as Trustee of the Fund.

DATED the _____ day of _____ 19

Name:

Signature:

Address:

..... P/code:

Occupation:

Membership Class:

Date of Birth:

NOMINATED DEPENDANT(S)

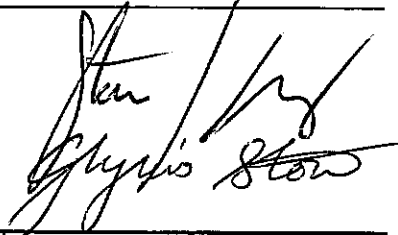
I nominate the undermentioned persons as my Nominated Dependents:

<u>SURNAME</u>	<u>GIVEN NAME</u>	<u>RELATIONSHIP</u>	<u>% OF TOTAL BENEFIT</u>
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SCHEDULE C

PARTICIPATING EMPLOYERS ADMITTED TO FUND

UNDER CLAUSE 35

NAME OF PARTICIPATING EMPLOYERS	DATE OF ADMISSION	EXECUTION OF PARTICIPATING EMPLOYERS OR OF TRUSTEE CONFIRMING ADMISSION
BONZA BRATS PTY LTD	22/10/98	

SCHEDULE D

PERCENTAGE VESTING SCHEDULE

OPTION 1			OPTION 2	
No. of Years Completed as a Member of the Fund	Percentage Balance of Member's Accumulation	OR	No. of Years Completed as an Employee of Employer	Percentage Balance of Member's Accumulation
at least	less than		at least	less than
0	1		0	1
1	2		1	2
2	3		2	3
3	4		3	4
4	5		4	5
5	6		5	6
6	7		6	7
7	8		7	8
8	9		8	9
9	10		9	10
10	11		10	11
11	12		11	12
12	13		12	13
13	14		13	14
14	15		14	15
15	16		15	16
16	17		16	17
17	18		17	18
18	19		18	19
19	20		19	20