

DUPLICATE

**TRUST DEED ESTABLISHING  
BADG SUPERANNUATION FUND**

DONATO CARBONE AND ANDREA LOUISE CARBONE

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# SUPERANNUATION TRUST DEED

Made on 20 July 2007

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BY **DONATO CARBONE AND ANDREA LOUISE CARBONE** both of 94 Minimine Street, Stafford, Queensland

(‘Trustee’)

## BACKGROUND

- A. The Trustee wants to establish and maintain a superannuation fund named as **BADG Superannuation Fund** solely for the purpose of providing superannuation benefits for its Members and for their Dependants in the event of the death of a Member and for any other purposes allowed by the Superannuation Law.
- B. The Trustee will act as trustee of the Fund and has consented to act as the Fund's trustee in accordance with the powers, under and subject to this Deed.
- C. The Trustee has agreed to conduct the Fund in a way that ensures the Fund at all times attracts any income tax concessions that apply to superannuation funds.

## AGREED TERMS

### 1. FUND

This Deed sets out the way in which **BADG Superannuation Fund** (‘Fund’) will operate and the roles and the responsibilities of the Trustee and any person, company or entity associated with the Fund or having some responsibility under this Deed.

### 2. DEFINITIONS

In this document:

‘Account’ means any one of the following:

- (a) Accumulation Account;
- (b) Pension Account;
- (c) Income Account;
- (d) Equalisation Account;
- (e) Forfeiture Account; and
- (f) any other accounts required to be opened or maintained by the Trustee in accordance with the Superannuation Law or any other accounts the Trustee decides to establish and maintain;

**'Accumulation Account'** means the Account established on behalf of each Member or Beneficiary as described in clause 15;

**'Actuary'** means the actuary (if any) for the time being appointed under this Deed;

**'Administration Manager'** means a person appointed as administration manager of the Fund in accordance with clause 10.1(c);

**'Allot'** has the meaning given to that term in the SIS Regulations;

**'Annuity'** means a Benefit payable by instalments that satisfies the meaning of Annuity in regulation 1.05 of the SIS Regulations or any other provision of the Superannuation Law;

**'Applicant'** means a Member who makes a contributions splitting application under clause 29.6;

**'Approved Benefit Arrangement'** means a fund or benefit arrangement other than the Fund including without limitation another Complying Superannuation Fund, an Approved Deposit 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 Superannuation Law and includes an Eligible Rollover Fund;

**'Approved Deposit Fund'** in relation to a year of income means a fund which is a complying approved deposit fund in accordance with the Taxation Act;

**'Approved Trustee'** means a trustee approved by the Australian Prudential Regulation Authority or any other body or person that has responsibility for the administration of superannuation funds other than Self Managed Superannuation Funds;

**'Auditor'** means the auditor for the time being appointed under clause 10.1(d);

**'Authorised Deposit-taking Institution'** has the meaning given to that term in the *Banking Act 1959* (Cth);

**'Beneficiary'** means a person who is presently and absolutely entitled or has a contingent right to receive a Benefit under this Deed at any given time and includes a Member, a Dependent or a Pensioner;

**'Benefit'** means any amount which is 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, Dependant 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;

**'Binding Death Benefit Nomination'** means a nomination made by a Member in relation to the payment or application of a death benefit that is binding on the Trustee in accordance with the Superannuation Law;

**'Compassionate Ground'** has the meaning given to that term in the Superannuation Law;

**'Complying Superannuation Fund'** in relation to a year of income means a fund which is a complying superannuation fund in accordance with the Superannuation Law;

**'Constitutional Corporation'** has the meaning given to that term in the Superannuation Law;

**'Contributions'** means payments to the Fund by Members, Employers and other Permitted Entities in accordance with this Deed before the deduction of any Taxation payable in respect of those Contributions;

**'Corporations Act'** means the *Corporations Act 2001* (Cth);

**'Deed'** means this deed and any alterations, additions, amendments, modifications or variations to it;

**'Dependant'** in relation to a Member or former Member means:

- (a) the Spouse of the Member or former Member or the widow or widower of a deceased Member;
- (b) any child of a Member or former Member;
- (c) any person with whom the Member is in an Interdependency Relationship; or
- (d) any other person who, in the opinion of the Trustee, was financially dependant on the Member at the relevant time;

**'Directors'** means (where the Trustee is a Constitutional Corporation) the directors or board of management for the time being of the Trustee as the case requires;

**'Disclosure Document'** means any document required to be given under the Corporations Act to a person applying to be a Member;

**'Earnings'** means all net income and net capital gains derived from the assets of the Fund whether realised or unrealised after deducting any capital losses and any allowances for expenses and Taxation as the Trustee considers appropriate;

**'Eligible Rollover Fund'** has the meaning given to that term in the Superannuation Law;

**'Employee'** has the meaning given to that term in the SIS Act;

**'Employer'** has the meaning given to that term in the SIS Act;

**'Employment Termination Payment'** has the meaning given to that term in the Taxation Act;

**'Family Law'** means the Payment Splitting arrangements under the Superannuation Law;

**'Financial Assistance'** means any financial assistance granted to the Fund in accordance with Part 23 of the SIS Act;

**'Financial Year'** means a period of twelve months ending on 30 June or any other period of twelve months as the Trustee determines;

**'Fluctuation Account'** means the account established under clause 18;

**'Forfeiture Account'** means the account established under clause 42.3;

**'Full-Time Gainful Employment'** means Gainful Employment on a full-time basis within the meaning of the Superannuation Law;

**'Fund'** means the fund established by this Deed;

**'Fund Earning Rate'** means the earning rate for the Fund (which may for the purposes of this Deed be negative) calculated under clause 17.4 after taking into account any provisions or reserves for future contingencies as the Trustee considers reasonable;

**'Fund Year'** means a period of twelve months ending on 30 June, or any other period ending on any other date as the Trustee determines;

**'Gainful Employment'** in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law;

**'Guarantee Act'** means the *Superannuation Guarantee Charge Act 1992* (Cth) which incorporates the *Superannuation Guarantee (Administration) Act 1992* (Cth) and any regulations made to that Act;

**'Income Stream'** means:

- (a) a Pension;
- (b) an Annuity; or
- (c) a Benefit payable in a form other than as a Superannuation Lump Sum as permitted by the Superannuation Law;

**'Individual Trustee'** means a natural person who is appointed to be a Trustee of the Fund;

**'Insured Member'** means any Member who has a Policy effected in his or her name by the Trustee;

**'Insurer'** means any insurer with whom the Trustee effects a Policy or Policies;

**'Interdependency Relationship'** has the meaning given to that term in the Superannuation Law;

**'Investment Manager'** means a person appointed as an Investment Manager of the Fund in accordance with clause 10.1(a);

**'Legal Personal Representative'** has the meaning given to that term in the SIS Act;

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

**'Maximum Splittable Amount'** has the meaning given to that term in the SIS Regulations;

**'Member'** means a person who has been admitted as a member of the Fund under clause 25;

**'Member Account'** means a Member's Accumulation Account or Pension Account as the case may be;

**'Membership'** means a Member's or Beneficiary's membership of the Fund;

**'Nominated Beneficiary'** means one or more Dependants or Legal Personal Representatives of a Member nominated by the Member as the Nominated Beneficiary;

**'Non-Binding Death Benefit Nomination'** means a nomination made by a Member in relation to the payment or application of a death benefit that is not binding on the Trustee;

**'Non-Concessional Contribution'** has the meaning given to that term in the Taxation Act;

**'Non-Member Spouse'** in relation to a Member has the meaning given to that term in the Superannuation Law. A person ceases to be a Non-Member Spouse when:

- (a) the entitlement of the Non-Member Spouse in respect of a Payment Split is paid to the Non-Member Spouse or transferred or rolled over in accordance with the Superannuation Law; or
- (b) he or she becomes a Member;

**'Normal Retirement Age'** means the age of 65 years or any other age not less than 55 years that is acceptable to or required by the Superannuation Law and as the Trustee determines;

**'Part-Time Gainful Employment'** means Gainful Employment on a part-time basis within the meaning of the Superannuation Law;

**'Payment Flag'** has the meaning given to that term in the Superannuation Law;

**'Payment Split'** has the meaning given to that term in the Superannuation Law and includes a Payment Split in accordance with the SIS Regulations;

**'Pension'** includes a Benefit payable by instalments that satisfies the meaning of Pension in regulation 1.06 of the SIS Regulations or any other provision of the Superannuation Law;

**'Pension Account'** means the account established in respect of a Pensioner in accordance with clause 16;

**'Pensioner'** means a member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and includes a Reversionary Beneficiary in receipt of a Pension;

**'Permanent Incapacity'** has the meaning given to that term in the Superannuation Law;

**'Permitted Entity'** means any person or entity permitted under the Superannuation Law to make a Contribution in respect of a Member;

**'Policy'** means any policy of assurance including:

- (a) 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 in relation to a Member or a former Member;
- (b) any policy which provides that Benefits are payable to the Trustee on the death or disablement of a Member unless the acquisition of the policy is prohibited by the Superannuation Law;

**'Preservation Age'** means:

- (a) for a person born before 1 July 1960 55 years of age
- (b) for a person born during the year 1 July 1960 to 30 June 1961 56 years of age
- (c) for a person born during the year 1 July 1961 to 30 June 1962 57 years of age
- (d) for a person born during the year 1 July 1962 to 30 June 1963 58 years of age
- (e) for a person born during the year 1 July 1963 to 30 June 1964 59 years of age
- (f) for a person born after 30 June 1964 60 years of age

**'Preserved'** means the prohibition against paying any amount held in the Fund before a Member reaches Preservation Age or is otherwise entitled to be paid that amount in accordance with the Superannuation Law and **'Preserve'** has a corresponding meaning;

**'Preserved Payment'** means a payment required to be Preserved in order for the Fund to be a Complying Superannuation Fund either made to the Fund by:

- (a) an Employer;
- (b) a Permitted Entity;
- (c) a Member, or
- (d) transfer from an Approved Benefit Arrangement;

**'Relative'** in relation to a Member or former Member, means any of the following:

- (a) 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;
- (b) the Spouse of any person specified in paragraph (a); or
- (c) any child of any of the persons specified in paragraph (a) or (b);

**'Reserve Account'** means the account established under clause 19;

**'Retires from Employment'** means retirement as defined by the Superannuation Law 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 Superannuation Law for the payment of Benefits;

**'Reversionary Beneficiary'** means a Dependant nominated by a Pensioner (and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee) who is eligible to receive a Benefit on the death of a Pensioner;

**'RSE Licensee'** has the meaning given to that term in the SIS Act;

**'Self Managed Superannuation Fund'** means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law;



**‘Severe Financial Hardship’** has the meaning given to that term in the Superannuation Law;

**‘Shortfall Component’** has the meaning given to that term in section 64 Guarantee Act;

**‘SIS Act’** means the *Superannuation Industry (Supervision) Act 1993* (Cth);

**‘SIS Regulations’** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth);

**‘Splittable Contribution’** has the meaning given to that term in the SIS Regulations;

**‘Spouse’** means:

- (a) a person legally married to a Member at any time; or
- (b) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a 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,

except that where a person has more than one Spouse, the Trustee must decide:

- (c) which one or more of them is deemed to be that person's Spouse; and
- (d) the proportions in which a Benefit payable to each Spouse is to be divided between them where a Binding Death Benefit Nomination has not been made;

**‘Statutory Authority’** means a regulatory body or person having responsibility for the administration of superannuation, as the case requires including the:

- (a) Commissioner of Taxation;
- (b) Australian Prudential Regulation Authority;
- (c) Australian Securities and Investments Commission;

**‘Superannuation Law’** means any requirement under the:

- (a) SIS Act;
- (b) SIS Regulations;
- (c) *Occupational Superannuation Standards Act 1987* (Cth);
- (d) *Occupational Superannuation Standards Regulations* (Cth);
- (e) *Family Law Act 1975* (Cth);
- (f) *Corporations Act*;
- (g) *Corporations Regulations* (Cth);
- (h) *Taxation Act*;
- (i) *Financial Sector (Collection of Data) Act 2001* (Cth);
- (j) *Financial Institutions Supervisory Levies Collection Act 1998* (Cth); and
- (k) any other present or future legislation which the Trustee must comply with for the Fund to:
  - (i) qualify for concessional Taxation treatment as a Complying Superannuation Fund; or
  - (ii) meet any other requirement of the Statutory Authority,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively;

**‘Superannuation Lump Sum’** has the meaning given to that term in the Taxation Act;

**'Taxation Act'** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) and any regulations or public rulings issued under those Acts;

**'Taxation'** includes income tax, pay-roll tax, land tax, stamp duty and any other taxes, duties or surcharges paid or payable by the Trustee on behalf of the Fund or a Member or, where applicable, by any Member, former Member, Dependant or Beneficiary;

**'Taxed Splittable Contribution'** has the same meaning given to that term in the SIS Regulations;

**'Temporarily Totally Disabled'** means disablement as a result of illness, accident or injury which commences at or before a Member attaining the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier) and which causes the Member to be continuously absent from the Member's profession, trade, business, occupation or employment for any period as any Policy effected in respect of the Member in respect of total disablement requires where the Trustee expects the Member's disablement to be temporary and **'Temporary Total Disablement'** has a corresponding meaning;

**'Temporary Incapacity'** has the meaning given to that term in the Superannuation Law;

**'Total and Permanent Disablement'** means ill health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health to engage in Full-Time Gainful Employment or Part-Time Gainful Employment for which the Member is reasonably qualified by education, training or experience;

**'Tribunal'** means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993* (Cth);

**'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 9 of this Deed;

**'Unclaimed Benefits'** means those Benefits described as Unclaimed Money under Part 22 of the SIS Act;

**'Unrestricted 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 Superannuation Law and is an Unrestricted Non-Preserved Benefit as that term is defined in the SIS Regulations, including Subdivision 6.1.4 of the SIS Regulations;

**'Untaxed Splittable Contribution'** has the meaning given to that term in the SIS Regulations; and

**'Vested Benefit'** means any Benefit that has vested to the benefit of a Member in accordance with the Superannuation Law.

### 3. INTERPRETATION OF OTHER MATTERS

#### 3.1 Clause headings and index

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

#### 3.2 Legislation

A reference to any act of parliament or regulation or to any section or provision of that legislation includes any statutory modification or re-enactment or any statutory provision substituted therefor and by-laws, regulations or other statutory instruments issued under them.

#### 3.3 Plural and gender of words

The singular includes the plural and vice versa and one gender includes the other gender.

### **3.4 A person includes a body corporate**

A reference to a person includes a body corporate.

### **3.5 Dispute as to interpretation**

If there is a dispute about the interpretation of this Deed or the rights or obligations of the Member or any other person, then (except to the extent otherwise expressly provided in the Deed) the decision of the Trustee is final and binding.

### **3.6 Severance**

If:

- (a) any provision of this Deed is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly; or
- (b) notwithstanding clause 3.6(a), a provision of this Deed would still be void, voidable, unenforceable or illegal:
  - (i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and
  - (ii) in any other case, the whole provision must be severed, and the remainder of this Deed will be of full force and effect.

### **3.7 Fund Subject to Superannuation Law at all times**

This Deed is at all times subject to the Superannuation Law and is deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Statutory Authority.

### **3.8 Inconsistency**

If there is an inconsistency between the Deed and the Superannuation Law, the Superannuation Law prevails to the extent of the inconsistency.

### **3.9 Requirements of the Statutory Authority**

Any references to any requirements, consents or approvals being required to be given by the Statutory Authority or for the purposes of satisfying the Superannuation Law, means requirements, consents or approvals of the Statutory Authority or under the Superannuation Law.

## **4. OTHER PROVISIONS TO NOTE**

### **4.1 Exercise of powers and rights**

All powers, rights, decisions, discretions, appointments or other authorisations of whatsoever nature or kind granted to or conferred on 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 a Trustee:

- (a) where the Trustee is a Constitutional Corporation, by resolution of the Directors in accordance with its constitution or by any person or persons having the authorisation of those Directors to act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if required by the Superannuation Law, by a majority of persons holding the office of Trustee,

if all requirements of the Superannuation Law are satisfied.

## **4.2 Benefits secured**

The rights of the Members or their Dependants who receive Benefits payable under this Deed are secured within the meaning of the Superannuation Law.

## **5. GOVERNING LAW**

This Deed is governed and construed in accordance with the laws of Queensland. The Trustee, Members, Beneficiaries and Employers irrevocably submit to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

## **6. DISPUTE RESOLUTION**

### **6.1 Enquiries and complaints mechanism**

The Trustee must effect arrangements to deal with enquiries and complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Superannuation Law.

### **6.2 Trustee to implement decision**

Subject to the Trustee's rights to determine in its discretion to appeal against any decision of a court or tribunal, the Trustee must ensure it implements any decision of a court or tribunal as required by that court or tribunal.

## **7. STRUCTURE OF THE FUND**

### **7.1 Fund vested in Trustee**

The Fund is at all times vested in the Trustee and managed by the Trustee upon the terms and subject to the trusts, powers, authorities and discretions in this Deed.

### **7.2 Class of Members**

The Trustee has the power to create any additional class or classes of Membership with rights, entitlements, conditions of eligibility and Benefits as the Trustee thinks appropriate.

### **7.3 Composition of the Fund**

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

## **8. COVENANTS**

The Trustee must perform and observe the covenants, trusts conditions and obligations of this Deed as and to the extent they are included in the Deed or deemed to be included in the Deed by the Superannuation Law.

## **9. APPOINTMENT AND CHANGE OF TRUSTEE**

### **9.1 Purpose of Fund**

Subject to the Superannuation Law, the Trustee must at all times be a Constitutional Corporation, or where the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund must be the provision of old-age pensions as that term is defined in section 51(xxiii) of the Commonwealth of Australia Constitution Act.

## 9.2 Self Managed Superannuation Funds and Approved Trustee Funds

- (a) Notwithstanding anything in this clause, at any time whilst the Fund is a Self Managed Superannuation Fund, a person is not eligible to be:
  - (i) the Trustee; or
  - (ii) where the Trustee is a Constitutional Corporation, a Director of the Trustee,
  - (iii) of the Fund unless clauses 9.2(b) to 9.2(c) are satisfied.
- (b) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with one Member, the Trustee must either be:
  - (i) a Constitutional Corporation where:
    - (A) the Member is the sole director of the Constitutional Corporation; or
    - (B) the Member is one of only two directors of the Constitutional Corporation, and the Member and the other director are relatives; or
    - (C) the Member is one of only two directors of the Constitutional Corporation, and the Member is not employed by the other director; or
  - (ii) two Individual Trustees comprising the Member and another person who is either:
    - (A) a relative of the Member; or
    - (B) not an employer of the Member.
- (c) Subject to clause 9.2(d), if the Fund is a Self Managed Superannuation Fund with more than one Member, the Trustee must be:
  - (i) a Constitutional Corporation where each Member is a director of the Constitutional Corporation and each director is a Member; or
  - (ii) Individual Trustees where each Member is an Individual Trustee and each Individual Trustee is a Member of the Fund.
- (d) The requirements in clauses 9.2(b) and (c), are subject to any alternative tests or exceptions to the general rules outlined in those clauses, contained in section 17A(3) of the SIS Act, or any other Superannuation Law.
- (e) For the purposes of clause 9.2(c), no Member of the Fund may be employed by another Member of the Fund unless permitted by the Superannuation Law.
- (f) If the Fund has fewer than 5 Members and is not a Self Managed Superannuation Fund, the Trustee must be an Approved Trustee or a RSE licensee that is a Constitutional Corporation.

## 9.3 Appointment of Trustee

- (a) Subject to the Superannuation Law, a majority of Members may, by deed or other written instrument, appoint a person or persons as Trustee if the person or persons consent to the appointment in writing and give any other consents or declarations required by the Superannuation Law.
- (b) The Legal Personal Representative of:
  - (i) a deceased Member;
  - (ii) a Member who has lost legal capacity; or
  - (iii) a Member who has appointed that Legal Personal Representative as their attorney under an enduring power of attorney,may exercise the Member's decision-making power, on the appointment of a Trustee, on behalf of the Member.
- (c) Where a Member is under the age of 18 years, a parent or guardian of the Member is permitted to exercise that Member's power to appoint a Trustee.

- (d) If the Fund has no remaining Members and no other person in clause 9.3 has the power to appoint a Trustee on behalf of the last person ceasing to be a Member, the Legal Personal Representative of the last Member to have a Legal Personal Representative has power to appoint a Trustee.

#### **9.4 Ceasing to act as Trustee**

A Trustee must immediately cease to act as Trustee of the Fund:

- (a) if, being an individual, he or she dies or otherwise loses his or her legal capacity;
- (b) if, being a Constitutional Corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;
- (c) if the Trustee is disqualified from holding office as a trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;
- (d) if the Trustee resigns as Trustee of the Fund by notice in writing to a majority of the Members; or
- (e) subject to the Superannuation Law, if the person is removed from office by notice in writing given by no less than two-thirds of the Members to the Trustee.

#### **9.5 Continuity of office**

Any person who acts as Trustee must, on ceasing to be Trustee under clause 9, do everything necessary to vest the Fund in the remaining or new Trustee or Trustees and must deliver all records and other books to the remaining or new Trustee or Trustees.

#### **9.6 Quorum of Individual Trustees**

A quorum of Trustees is that number of Trustees agreed upon or required by the Superannuation Law.

#### **9.7 Remuneration of Trustee**

Unless permitted by the Superannuation Law, during any time the Fund is a Self Managed Superannuation Fund, no Trustee of the Fund may receive remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund in its capacity as Trustee of the Fund.

#### **9.8 Confidentiality of Information**

The Trustee and every Employer must, as far as possible, treat as confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this Deed.

#### **9.9 Member may be Trustee**

No Individual Trustee, Director or officer of a Constitutional Corporation or Employee of an Employer is by virtue of their office or the powers delegated to them by the Trustee disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

### **10. APPOINTMENT AND REMOVAL OF OTHER PERSONS**

#### **10.1 Appointment**

The Trustee may appoint in writing one or more persons, as appropriate, as:

- (a) Investment Manager, who has powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
- (b) Actuary, who must be 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 a Fellow;
- (c) Administration Manager, who has power to carry out some or all of the administration of the Fund;
- (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
- (e) Custodian, who has powers, discretions and authorities relating to holding the legal title and the custody of title, deeds and any documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund unless that person is prohibited to act under the Superannuation Law; and
- (f) other consultants and officers desirable for the proper management and administration of the Fund.

## **10.2 Removal**

The Trustee may remove from office any person or company appointed to any position under clause 10 and must remove that person or company if required by the Superannuation Law.

## **11. INVESTMENT POWERS OF TRUSTEES**

### **11.1 Investment strategy**

The Trustee must from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances and those investment strategies must be formulated and effected in accordance with the Superannuation Law.

### **11.2 Power of investment**

Subject to the Superannuation Law and the Fund's investment strategy, the Trustee may invest the whole or any part of the Fund's assets in any one or more of the following investments as if the Trustee was the absolute owner beneficially entitled:

- (a) in the acquisition by original subscription or by purchase or otherwise of debentures, debenture stock, whether secured or unsecured, or secured or unsecured notes or other loan instruments of any corporation wheresoever situated or incorporated and payable or repayable in whatsoever currency and whether bearing interest or not;
- (b) in the acquisition by original subscription or by purchase or otherwise of the shares or stocks whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon of any corporation wheresoever situated or incorporated and expressed in whatsoever currency;
- (c) in the purchase of or at interest upon the security of shares, stocks, funds, securities, land or other investment or property of whatsoever nature and wheresoever situated (other than an investment of a wasting or speculative nature) and whether income producing or not and whether fully or partly paid up or involving liabilities or not or in loans upon personal credit with or without security as the Trustee thinks fit and to the intent that the Trustee has the same power in all respects;
- (d) in the acquisition by original subscription or by purchase or otherwise of interests or rights, whether partly paid or not and whether having liability thereon or not, in corporations not having a share capital wheresoever situated or incorporated;

- (e) in the acquisition of securities of any Country or of any State, Territory or Colony whether by original subscription, purchase or otherwise;
- (f) in the acquisition of securities of any statutory or municipal body wheresoever situated and for any period whatsoever and whether by original subscription, purchase or otherwise;
- (g) in the acquisition by original agreement or by purchase or otherwise of options and rights to take up shares or stock whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon of any corporation wheresoever situated or incorporated or to take up interests or rights whether having liability thereon or not incorporations not having a share capital wheresoever situated or incorporated;
- (h) in the acquisition of units or sub-units of any unit trust whether by original subscription, purchase or otherwise;
- (i) in the acquisition by any means whatsoever of land or interest in land of any tenure, improved or unimproved and wheresoever situated;
- (j) on loan to any person or deposited with any person whatsoever or wheresoever situated with or without security and for any period whatsoever;
- (k) on deposit with any Authorised Deposit-taking Institution for any period whatsoever;
- (l) in erection of buildings or structures or the making of improvements on land with any tenure improved or unimproved and wheresoever situated;
- (m) on any Policy or Annuity with an Insurer and any choses in action, interest for life or any lesser term or any reversion or otherwise arising and whether as original Policy holder or by assignment; and
- (n) in any other investments which the Trustee considers appropriate and which satisfy the Superannuation Law,

with full power to vary, replace, or otherwise deal with investments as fully and effectively as a person absolutely and beneficially entitled dealing with their own property may do so, however the Trustee must not invest in loans to or give any financial assistance to a Member or a relative of a Member unless the Fund was established before 16 December 1985 and, until 1 July 1994, the Trustee had express power under the governing rules of the Fund to lend money or give financial assistance to Members or their relatives.

### **11.3 Power to hold investment in different names**

An investment may be held in any name including the name of a nominee (whether an individual or a corporation) as the Trustee determines.

### **11.4 Disclosure of Trustee's interest in investment**

The Trustee and any Director must disclose details of any interest in any investment in the manner prescribed under the Corporations Act and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

### **11.5 Specific investments**

Subject to clauses 11.1 and 11.2, the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee may determine 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.



## 12. TRUSTEES' POWERS GENERALLY

### 12.1 General powers

Subject always to the Superannuation Law and without prejudice to the powers vested in the Trustee by this Deed or otherwise, the Trustee may:

- (a) institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund, and to commence, carry on and 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, remission, breach of duty or breach of the terms of this Deed;
- (b) carry on a business;
- (c) refer any claims or demands by or against the Fund to arbitration and to observe and perform any awards arising from that arbitration;
- (d) make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (e) open bank accounts and retain on current or deposit account at any bank any moneys as it considers proper and make procedures for the operation of those accounts including the signing and endorsing of cheques in connection therewith;
- (f) enter into a leasing arrangement with any person, including (but not limited to):
  - (i) a finance lease;
  - (ii) an operating lease; or
  - (iii) a hire-purchase agreement;
- (g) determine who may sign receipts, acceptances, endorsements, release, contracts and documents on the Fund's behalf;
- (h) pay Benefits out of the Fund to a Member or a Dependant;
- (i) decide who are Dependents for the purposes of this Deed;
- (j) in case of the mental or physical ill-health or incapacity of any person entitled to Benefits, pay or apply those Benefits or any part thereof at the Trustee's discretion to or for the benefit of any person and the Dependents of that person or any of them as the case may be without being responsible for seeing to the application of payments under this clause or payments made in the exercise of any other power vested in the Trustee by this Deed;
- (k) 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 however that indemnity may only be given to the extent it is not limited by or contrary to the Superannuation Law;
- (l) 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;
- (m) 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;
- (n) take and act upon the opinion of any legal practitioner, whether about the interpretation of this Deed or any other document or statute or the administration of the trusts declared, without being liable to any Member or his or her Dependents for any act done by in accordance with that opinion;

- (o) insure and keep insured as it sees fit any liability of the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers) or the liability of the Fund to indemnify and reimburse the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers);
- (p) insure or re-insure any risk, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;
- (q) provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;
- (r) purchase an Annuity from an Insurer to provide all or a part of the Pension payable in respect of a Member and that Annuity must be in the name of the Trustee or, if the Trustee so determines, in the name of the Member or former Member;
- (s) enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (t) seek modifications of or exemptions from the application of the Superannuation Law to the Fund; and
- (u) accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component in the Deed or in accordance with the Superannuation Law.

## **12.2 Discretion of Trustee**

Subject to any exceptions in the Superannuation Law, despite any other provision in this Deed no discretion under the rules of this Fund can be exercised by a person other than the Trustee, unless the Fund is a Self Managed Superannuation Fund.

## **12.3 Power of delegation**

The Trustee may delegate to any person, or where there is more than one Trustee to any one or more Trustee, any of the powers, duties and discretions conferred on the Trustee under this Deed upon any terms that the Trustee determines and the Trustee may vary, limit or revoke that delegation however any delegation must be undertaken in accordance with the Superannuation Law.

## **13. LIABILITY AND INDEMNIFICATION OF TRUSTEE**

### **13.1 Liability**

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is not liable for any act or default done or omitted to be done in the exercise of their powers, duties or discretions, or for any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund are invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited, or for any loss suffered as a result of relying on any professional advice or assistance, or for any other loss, damage or misfortune whatever except if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

## **13.2 Indemnity**

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) are indemnified and, subject to the Superannuation Law, have a lien on the Fund for that indemnity against all liabilities incurred by them through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under this Deed or in the proper performance of their duties under this Deed, except if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil order under the Superannuation Law.

## **13.3 Limitation of clause**

This clause only operates to exempt a person from liability and provide an indemnity to the extent that the exemption from liability or provision of indemnity is not limited by or inoperative under the Superannuation Law.

## **14. TRUSTEE TO OPEN ACCOUNTS**

The Trustee must open and operate the Accounts and any other accounts the Trustee decides to establish and operate.

## **15. ACCUMULATION ACCOUNT**

### **15.1 Establishment**

The Trustee must establish an Accumulation Account for each Member or Beneficiary.

### **15.2 Amounts to be credited**

The Trustee must credit to the Accumulation Account any amounts required by this Deed and the Superannuation Law including:

- (a) Contributions;
- (b) the portion of the Earnings (if positive) determined by the Trustee under clause 17.5;
- (c) amounts received by transfer from Approved Benefit Arrangements;
- (d) proceeds of any Policy or Annuity attributable to the Member;
- (e) any Financial Assistance received by the Fund attributable to the Member;
- (f) any amounts transferred or Allotted from other Accounts;
- (g) any Levy or Shortfall Component paid in respect of the Member; and
- (h) any other amounts the Trustee determines which are permitted by the Superannuation Law.

### **15.3 Amounts to be debited**

The Trustee must debit the Accumulation Account with any amounts required by this Deed and the Superannuation Law including:

- (a) Benefits paid to Members or Beneficiaries;
- (b) the portion of the Earnings (if negative) determined by the Trustee under clause 17.5;
- (c) amounts transferred to Approved Benefit Arrangements;
- (d) any Taxation calculated in accordance with clause 24 attributable to the Member for whom the Accounts or Account has been established;

- (e) any amounts transferred or Allotted to other Accounts;
- (f) any costs or expenses attributable to the Member including the cost of any Policies effected by the Trustee in respect of the Member; and
- (g) any other amounts the Trustee determines and which are permitted by the Superannuation Law.

## 16. PENSION ACCOUNT

### 16.1 Establishment

Where the Trustee determines to pay all or any of the Benefits to the Member as a Pension, the Trustee must establish a Pension Account in respect of the Member.

### 16.2 Amounts to be transferred

The Trustee must transfer to the Pension Account any assets of the Fund or amounts as are determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Member's Benefit as a Pension.

### 16.3 Amounts to be credited

The Trustee must credit to the Pension Account that portion of the Earnings (if positive) as the Trustee determines under clause 17.5, and any other amounts as the Trustee determines and which are permitted by the Superannuation Law.

### 16.4 Amounts to be debited

The Trustee must debit to the Pension Account all amounts required by this Deed and the Superannuation Law including Benefits paid to Members or Beneficiaries, that portion of the Earnings (if negative) as the Trustee determines under clause 17.5, and any other amounts as the Trustee determines and which are permitted by the Superannuation Law.

## 17. INCOME ACCOUNT

### 17.1 Establishment

The Trustee must establish an Income Account for the Fund.

### 17.2 Amounts to be credited

The Trustee must credit the Income Account with all amounts required by this Deed and the Superannuation Law including the Earnings (if positive) determined under clause 17.4 and any proceeds from Policies or Financial Assistance not credited to any other Account.

### 17.3 Amounts to be debited

The Trustee must debit the Income Account with all amounts required by this Deed (including any amounts required under clause 21(b)) and the Superannuation Law including any losses on sale of investments, any Taxation or Levy not attributed to a Member Account and the cost of any Policy not credited to a Member Account.

### 17.4 Trustee to determine Earnings and Fund Earning Rate

At the end of each Fund Year or at any other time that the Trustee considers appropriate or the Superannuation Law requires, the Trustee must determine:

- (a) the Earnings of the Fund in respect of the period since the previous determination; and

- (b) the Fund Earning Rate.

### **17.5 Distribution of Earnings**

Subject to clauses 18 and 20 and the Superannuation Law, the Fund Earning Rate calculated under clause 17.4 must be used to determine, at the Trustee's discretion, the proportion of the Earnings to be credited or debited to other Accounts (including Member Accounts, Pension Accounts or Reserve Accounts) from the Income Account.

### **17.6 Trustee to notify Members**

The Trustee must, when required by the Statutory Authority or the Superannuation Law, notify the Members of the basis of the calculation of the Fund Earning Rate.

## **18. FLUCTUATION ACCOUNT**

### **18.1 Establishment**

The Trustee may establish a Fluctuation Account.

### **18.2 Transfers to Fluctuation Account**

The Trustee must transfer to the credit of the Fluctuation Account any amount remaining in the Income Account after distribution of Earnings under clause 17.5.

### **18.3 Separation of Account moneys**

Amounts credited to the Fluctuation Account do not form part of any Member Account and any income earned by the Fund on the moneys held in the Fluctuation Account must be credited to the Fluctuation Account.

### **18.4 Use of Fluctuation Account**

The Fluctuation Account must be used for the following purposes:

- (a) as part of a reserving strategy to stabilise investment earnings;
- (b) to supplement the Fund Earning Rate; and
- (c) to pay any Taxation.

### **18.5 Adjustment of Member Account**

The Trustee may make, in its discretion and in accordance with the Superannuation Law, adjustments to the credit of a Member Account to reflect the Fund Earning Rate applying at the date of payment.

## **19. RESERVE ACCOUNTS**

Subject to the Superannuation Law, the Trustee may establish and maintain one or more Reserve Accounts and operate those accounts in accordance with rules it may specify from time to time for purposes including to separate:

- (a) assets funding a Pension from assets that are needed for solvency reasons as instructed by an Actuary or as otherwise determined by the Trustee;
- (b) assets funding a Pension into various classes to comply with the rules of the relevant Pension or to obtain favourable taxation treatment; or
- (c) some assets of the Fund from other assets to establish any other type of reserve account permitted by the Superannuation Law.

## 20. SPECIFIC INVESTMENTS

### 20.1 Recording of specific investments

Where the Trustee invests separately in respect of certain Members or Beneficiaries in accordance with clause 11.5, the Trustee must record on whose behalf those specific investments are made for the purposes of determining allocation to the Member Account.

### 20.2 Allocation of Earnings and costs for specific investments

The Member Account of the relevant Member or Beneficiary must be credited with any income and profit and debited with any costs, charges or Taxation in proportions applicable to any specific investment made under clause 20.1, in accordance with the Superannuation Law.

## 21. VALUATION OF FUND

At the end of each Fund Year or at any other time the Trustee considers it appropriate or the Superannuation Law requires, the Trustee must:

- (a) make a valuation of all of the assets of the Fund (including the value of any Policy held by the Fund);
- (b) transfer any surplus or deficiency in the valuation of assets, other than specific investments in accordance with clause 20.2, to the Income Account; and
- (c) ensure that the records and Accounts of the Fund reflect the valuation of each asset.

## 22. RECORDS, REPORTS AND AUDIT

### 22.1 Trustee obligations

The Trustee must:

- (a) keep accounts and issue receipts for all money and other assets received into and disbursed from the Fund and of all dealings in connection with that money or assets;
- (b) collect and promptly pay to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution or into a trust account of a solicitor, accountant, investment manager or administration manager, all moneys due to or received on behalf of the Fund;
- (c) pay any premiums to Insurers as are required to maintain any Policies or Annuities;
- (d) keep and retain in safe custody all records, books, accounts, minutes, reports and other documents for any period required by the Superannuation Law;
- (e) prepare and lodge all documents required by the Superannuation Law;
- (f) ensure the Fund is audited at the end of each Fund Year or at any other time required by the Superannuation Law and ensure that the Auditor provides any certificates required by the Statutory Authority under the Superannuation Law;
- (g) once in each Fund Year, report on the affairs of the Fund to the Member in the form required by the Superannuation Law;
- (h) produce any books or information relating to the Fund and make suitable arrangements for access to premises where the books or information are kept for the purposes of inspection in accordance with the Superannuation Law; and
- (i) record against a Member's Benefit or Benefit Entitlement, a Payment Flag that has been validly served on the Trustee under the Superannuation Laws until it is validly lifted.

## **22.2 Provision of information**

The Trustee must give:

- (a) Employers;
  - (b) the Statutory Authority;
  - (c) the Actuary;
  - (d) the Auditor;
  - (e) Members;
  - (f) a court; and
  - (g) any other persons specified in the Superannuation Law,
- any information or documents required by the Superannuation Law.

## **22.3 Information and documents for Tribunal or court**

The Trustee must do all things necessary to comply with its obligations to the Tribunal under the *Superannuation (Resolution of Complaints) Act 1993* (Cth) or to a court.

## **22.4 Directions of Statutory Authority**

The Trustee must comply with any direction or requirement of the Statutory Authority, Tribunal or a court in relation to the Fund including, but not limited to, the acceptance of Contributions into the Fund, the disposal of assets of the Fund, the appointment of an investigator to the Fund and the conduct of an investigation into the Fund.

## **23. POLICIES OF INSURANCE**

### **23.1 Member Policies**

The Trustee may determine to effect Policies with an Insurer 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 and partly in another.

### **23.2 Member may request a specific Policy**

Where a Member makes a written request to the Trustee in writing to effect a Policy of a specified type in respect of the Member, the Trustee must effect that Policy unless:

- (a) the Trustee thinks the Policy is not in the best interests of the Member or the Dependents of the Member; or
- (b) the Member has in writing withdrawn, cancelled or altered the Member's original request.

### **23.3 Trustee to effect Policy if required**

If the Trustee has informed a Member that a Policy of a specified type will be effected in respect of a Member, the Trustee must effect the Policy except if the Member has requested the Trustee in writing not to effect the same.

### **23.4 Premiums**

Any premiums for a Policy effected may, if the Trustee considers it appropriate, be debited to an Insured Member's Accumulation Account.

## **23.5 Limitation on liability of Trustee**

Where a Trustee is not required to exercise the power to effect a Policy or Policies, the Trustee is not responsible or liable to a Member, a Member's Legal Personal Representative or Dependant if the Trustee decides not to exercise the power to effect that Policy or those Policies.

## **24. PAYMENT OF TAXATION AND LEVIES**

### **24.1 Deduction of Taxation on Benefit**

The Trustee may deduct from any Benefit payable to any Member or Beneficiary under this Deed any Taxation required to be deducted from it.

### **24.2 Taxation on Contributions and Shortfall Components**

The Trustee or, with the agreement of the Trustee, any other appropriate organisation may deduct any Taxation payable in relation to a Contribution or Shortfall Component before the Contribution or Shortfall Component being credited to the Accumulation Account of the Member.

## **25. MEMBERSHIP**

### **25.1 Eligibility for Membership**

- (a) The Trustee may admit any person who applies for membership in the Fund unless his or her admission would cause the Fund to breach the Superannuation Law.
- (b) If the Trustee accepts a person's application for Membership, the person becomes a Member from the date and on the terms that the Trustee determines.

### **25.2 Application for Membership**

Each application for Membership must be made by the relevant applicant in the form approved by the Trustee.

### **25.3 Admission to Membership without application**

The Trustee may, subject to the Superannuation Law, admit a person as a Member even though he or she has not applied for membership in accordance with clauses 25.1 and 25.2.

### **25.4 Members and Beneficiaries to provide information**

Each applicant for Membership and any Beneficiary must whenever requested by the Trustee give any information the Trustee thinks necessary for the purposes of any investigations in connection with the Fund, however where the Trustee is or becomes aware that the information given is incorrect or misleading or any relevant information has been deliberately withheld, the Trustee may alter or amend the Benefits to amounts which would have been determined had full and accurate information been supplied.

### **25.5 Member bound by Deed**

Each Member by virtue of his or her application is deemed to have consented to be bound by this Deed.

### **25.6 Member to be medically examined**

To effect, increase or otherwise vary any Policy or Annuity, the Trustee may require any Member or any person who has applied to become a Member to be medically examined or to submit other evidence of health or to provide proof of age to the satisfaction of the Insurer or to take steps necessary for those purposes.



## **25.7 Member refusing to be medically examined**

If any Member or person who has applied to become a Member refuses to undergo a medical examination or to undertake any other step which may reasonably be required for those purposes or if he or she fails to do anything which would or might prejudice the Policy or result in the Policy moneys or any part thereof not becoming payable, the Trustee may adjust the Benefit to be provided by the Fund for and in respect of that Member or person in any manner the Trustee considers appropriate.

## **26. MEMBERSHIP NOTIFICATION REQUIREMENTS**

### **26.1 Product Disclosure Statements**

The Trustee must give all new Members a Disclosure Document containing information and details of the Fund as required by the Superannuation Law.

### **26.2 Disclosure and reporting requirements**

The Trustee must annually give Members, former Members and Beneficiaries, any information in writing and copies of accounts, records and documents of the Fund as required by the Superannuation Law.

### **26.3 Former Member notices**

- (a) The Trustee must give former Members or their Legal Personal Representatives a written statement containing information and details about the Benefits of the former Member as is required to be given by the Superannuation Law.
- (b) No Member or Dependent of a Member is entitled to obtain information about the operation or the conduct of the Fund which, in the opinion of the Trustee, is inappropriate to disclose other than as set out in this clause.

### **26.4 Inspection of Deed and other Documents**

- (a) A copy of this Deed and any other documents required by the Superannuation Law must be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary.
- (b) Unless otherwise required by the Superannuation Law, it is sufficient for this clause 26.4 to make a copy of this Deed or the documents available to the Member or the Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when the office or business is open.

### **26.5 Meetings and Members**

The Trustee must notify the Members from time to time of the manner, time and place in which meetings of the Members of the Fund held in accordance with the Superannuation Law and for the purposes of this Deed are to be called and conducted.

## **27. CEASING TO BE A MEMBER**

A Member ceases to be a Member of the Fund on the first of the following to occur:

- (a) the Trustee determines that the Member has been paid all of his or her Benefit from the Fund;
- (b) where the Member dies, the Trustee determines that the deceased Member's Benefit has been paid to the deceased Member's dependants or Legal Personal Representative;

- (c) the Trustee determines that the Member's continued membership would cause the Fund to cease complying with the Superannuation Law; or
- (d) the Trustee determines, on reasonable grounds, that the Member should cease to be a Member.

## 28. CONTRIBUTIONS TO THE FUND

### 28.1 Eligibility to make Contributions

Subject to the consent of the Trustee and clause 29, Contributions to the Fund may be made by a Member, an Employer or any other Permitted Entity.

### 28.2 Superannuation Guarantee legislation

Where the Trustee accepts Contributions in accordance with the Guarantee Act, the Trustee must give all certificates, reports and other information required by the Guarantee Act.

## 29. GENERAL PROVISIONS CONCERNING CONTRIBUTIONS

### 29.1 Form of Contribution

A Contribution may be made either in cash or by transfer of an asset or assets if the assets transferred are authorised investments and are transferred in accordance with the Superannuation Law and the acquisition of the assets is not prohibited by the Superannuation Law.

### 29.2 Obligations to contribute

Subject to the Superannuation Law:

- (a) in the absence of any agreement to the contrary, no Member, Employer or Permitted Entity is under an obligation to make a Contribution to the Fund in respect of any Fund Year; and
- (b) a Member may remain a Member of the Fund notwithstanding that no Contributions are made in respect of that Member for any Fund Year.

### 29.3 Limitation on commencing Contributions

The Trustee must refuse to accept Contributions to the Fund by or in respect of a Member if the Fund is not authorised by the Superannuation Law to accept Contributions made on the Member's behalf.

### 29.4 Limit on Contributions

The Trustee must refuse to accept any Contributions or Shortfall Component if:

- (a) the Contributions are not otherwise authorised to be made, or are in excess of the amount of Contributions that can be made, on the Member's behalf by the Superannuation Law;
- (b) acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (c) the Statutory Authority directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component in accordance with the Superannuation Law.

## 29.5 Ineligible Contributions

If any Contribution or Shortfall Component is accepted by the Fund in breach of the Superannuation Law, the Trustee must refund the Contribution or Shortfall Component as required by the Superannuation Law, less any:

- (a) Taxation payable, or which the Member has validly authorised the Trustee to pay, to the Statutory Authority;
- (b) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contribution or Shortfall Components; and
- (c) reasonable administration charges,

and the Trustee must debit the Member's Account accordingly.

## 29.6 Contributions Splitting

- (a) Clause 29.6 does not apply to a Benefit:
  - (i) that is subject to a Payment Split; or
  - (ii) on which a Payment Flag is operating.
- (b) An Applicant may, in a Financial Year, apply to the Trustee in writing in the form (if any) as the Trustee may require, to roll over or transfer out of the Fund or Allot an amount of the Applicant's Benefits, for the benefit of the Spouse of the Applicant, that is equal to an amount of the Splittable Contributions made by, for, or on behalf of the Applicant in:
  - (i) the previous Financial Year; or
  - (ii) the Financial Year in which the application is made if the entire Benefit of the Applicant is to be rolled over or transferred in that Financial Year.
- (c) Subject to the SIS Regulations, an application under clause 29.6(b) is invalid:
  - (i) if in the Financial Year in which it is made:
    - (A) the Applicant has already made an application in respect of the relevant Financial Year; and
    - (B) the Trustee is:
    - (C) considering the application; or
    - (D) has given effect to the application; or
  - (ii) if the amount of any Benefits to which the application relates exceeds the Maximum Splittable Amount; or
  - (iii) subject to clause 29.6(d), if the Spouse of the Applicant:
    - (A) is aged 65 years or more; or
    - (B) is aged between the relevant Preservation Age and 65 years but does not consider himself or herself to be permanently retired.
- (d) Notwithstanding clause 29.6(c)(c)(iii), an application is not invalid under that clause if the application includes a statement by the Applicant's Spouse that the Spouse is aged:
  - (i) between the relevant Preservation Age and 65 years but does not consider himself or herself to be permanently retired; or
  - (ii) less than the relevant Preservation Age.
- (e) The Applicant must specify, in the application, the amount from his or her:
  - (i) Taxed Splittable Contributions; or
  - (ii) Untaxed Splittable Contributions; or
  - (iii) both,

- (f) that the Applicant seeks to split for the benefit of his or her Spouse.
- (g) The Trustee may at its discretion accept an application made under clause 29.6(a) if:
  - (i) the application complies with clauses 29.6(a) to (e); and
  - (ii) the Trustee has no reason to believe that the statement referred to in clause 29.6(d) is untrue; and
  - (iii) the amount to which the application relates does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- (h) Where the Trustee accepts an application under this clause 29.6, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application, roll over or transfer to an Approved Benefit Arrangement or Allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Applicant's Spouse.
- (i) Before the Trustee Allots any amount under clause 29.6(h) for the benefit of the Spouse:
  - (i) the Trustee must ensure that the requirements of clause 9.2 are satisfied where the Fund is a Self Managed Superannuation Fund; and
  - (ii) either, the Spouse must:
    - (A) be a Member; or
    - (B) apply to become and be accepted as a Member.
- (j) If an Applicant requests a split of:
  - (i) his or her Untaxed Splittable Contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the Non-Concessional Contributions that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew his or her entire Benefits at the time the Trustee gave effect to the application; or
  - (ii) his or her Taxed Splittable Contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the post-June 1983 component that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew his or her entire Benefits at the time the Trustee gave effect to the application.

## 30. TRANSFERS FROM AND TO APPROVED BENEFIT ARRANGEMENTS

### 30.1 Transfers from Approved Benefit Arrangements

- (a) Subject to clause 30.1(b), the Trustee may make any arrangements it thinks fit with any Member or the trustee of any Approved Benefit Arrangement, to transfer any assets to the Fund and may make arrangements about any other matter which, at the option of the Trustee, is incidental to or consequent upon the admission of a person to Membership of the Fund.
- (b) If an Approved Benefit Arrangement from which assets are transferred under clause 30.1(a) is one in which the payment of Benefits is otherwise required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of that Benefit that is attributable to those assets at a date earlier than that on which they would have been entitled to receive the same from that Approved Benefit Arrangement.
- (c) The Trustee must hold all amounts transferred under clause 30.1(a) as part of the Fund and reflect equivalent rights, entitlements and interests in the particular Member's Accumulation Account or Pension Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Member is 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.

- (d) 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 so that moneys are owing to an Employer, the Trustee may debit the Accumulation Account of the Member for a sum equivalent to the moneys owing from that part of the Benefit of the Member which would otherwise be payable and the Trustee must:
- (i) if the said moneys are owed to the Fund, retain them in the Fund; or
  - (ii) 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,

however the exercise of the lien by the Trustee under this clause must be permitted by the Superannuation Law.

### **30.2 Transfers to Approved Benefit Arrangements**

The Trustee may:

- (a) if requested by the Member, in lieu of part or all of any other Benefit to which the Member may be entitled under this Deed, transfer to the Trustee of another Approved Benefit Arrangement that portion of the assets of the Fund as the Trustee determines not exceeding the amount the Trustee considers equivalent in value to the Benefit being provided to the Member to the extent that it has accrued;
- (b) transfer a Benefit which has become payable to a Member to an Approved Benefit Arrangement selected by the Trustee where a Member has not given instructions to the Trustee on the payment or transfer of the Benefit within a reasonable period of the Benefit first becoming payable;
- (c) transfer some or all of any amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; and
- (d) transfer any other asset or amount in the Fund that it approves including any reserves, surplus or unallocated amounts in the Fund to another account or reserve in the Fund or to another Approved Benefit Arrangement.

### **30.3 Roll-Overs**

- (a) The Trustee may, upon receiving a written request from a Member to:
  - (i) pay all or any of the Benefit of the Member in the Fund to any Approved Benefit Arrangement or back into the Fund in a manner permitted by the Superannuation Law; or
  - (ii) roll over an amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; or
  - (iii) retain or apply all or any of the Benefit of the Member within the Fund in a manner permitted by the Superannuation Law,

pay, apply or retain the Benefit in accordance with that election or application.

- (a) The receipt of the transferred or rolled over Benefit by the proper officer of the Approved Benefit Arrangement is a complete discharge to the Trustee of all liabilities in respect of the transferred amount and the Trustee has no responsibility to see to the application of the transferred or rolled over Benefit.

- (b) Upon the completion of a payment in respect of a Member under this clause 30.3 all the rights and interest of that Member under this Deed (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstances affecting the Member) in respect of the amount paid are entirely extinguished.

### **30.4 Condition of Roll-Over**

Where the Trustee accepts a rollover back into the Fund of the Benefits under clause 30.3, those Benefits must be maintained and are only payable:

- (a) in accordance with this Deed; or
- (b) as permitted by the Superannuation Law.

### **30.5 Successor fund transfers**

Subject to clause 30.6, the Trustee may transfer the whole or part of the Member's Benefit to an Approved Benefit Arrangement without the request or consent of the Member where the Approved Benefit Arrangement is a successor fund within the meaning of the Superannuation Law. The Trustee may transfer the Member's Benefit to that Approved Benefit Arrangement whether or not the Member is at the time of the transfer a participant in that Approved Benefit Arrangement.

### **30.6 Eligible Rollover Funds**

The Trustee may in accordance with the Superannuation Law and, where required by the Superannuation Law the Trustee must, transfer a Member's Benefit to an Eligible Rollover Fund and must give any information to the trustee of the Eligible Rollover Fund at the times and in the manner required by the Superannuation Law.

### **30.7 Trustee to protect Preservation on roll over**

Where a Member or Former Member has a Preserved Payment Benefit in the Fund which forms part of the amount transferred or rolled over to an Approved Benefit Arrangement, the Trustee must ensure that the governing rules of the Approved Benefit Arrangement provide that the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Superannuation Law.

## **31. TYPES OF BENEFITS**

### **31.1 Benefit Entitlement**

Where a Member becomes entitled, under this Deed and the Superannuation Law, to a Benefit and there are no cashing restrictions that apply to the Benefit under the Superannuation Law, the Member may elect in writing to the Trustee to be paid the Benefit in one or more of the forms permitted by the Superannuation Law including:

- (a) one or more Superannuation Lump Sums; or
- (b) one or more Income Streams; or
- (c) any other form of Benefit permissible by the Superannuation Law.

### **31.2 Benefit Entitlement before 1 July 2007**

For the purposes of this clause where a Member was already receiving one or more of the following Pensions before 1 July 2007:

- (a) an Allocated Pension and/or non-commutable Allocated Pension in accordance with SIS Regulation 1.06(4);

- (a) a Life Expectancy Pension in accordance with SIS Regulation 1.06(7);
- (b) a Lifetime Commutable Pension in accordance with SIS Regulation 1.06(6); and
- (c) a Market Linked Pension in accordance with SIS Regulation 1.06(8),

that Member may continue to receive the above Pensions as permitted by the Superannuation Law.

### **31.3 Election**

- (a) Unless otherwise agreed to by the Trustee, the election given by the Member under clause 31.1 must be in writing and state the amount to be paid and the extent to which the amount is to be paid as any one or more types of Benefit permitted to be paid by the Superannuation Law and this Deed.
- (b) The election must be given to the Trustee before the Benefit commences to be paid to the Member, but is not binding on the Trustee.

### **31.4 Benefit Entitlement – with cashing restrictions**

Subject to the Superannuation Law, where a Member becomes entitled to a Benefit in accordance with clause 36 or 37 of this Deed, and there are cashing restrictions that apply to the Benefit under the Superannuation Law, the Trustee must pay that Benefit in accordance with those cashing restrictions.

### **31.5 Transfer of Policy as Benefit**

Where a Member or a Beneficiary is entitled to be paid a Benefit and that Benefit includes any interest in a Policy of any kind on the life of the Member or Beneficiary, the Trustee may transfer the Policy to the Member or Beneficiary or to the Dependents.

### **31.6 Transfer In-Specie as Benefit**

The Trustee may, with the consent of a Member or Beneficiary to whom a Benefit is payable, transfer assets of the Fund of an equivalent value to that Member or Beneficiary in lieu of paying the whole or any part of the amount otherwise payable under this Deed.

## **32. PRESERVATION**

The Trustee must Preserve the amounts of Contributions in respect of Members or Beneficiaries as required by the Superannuation Law.

## **33. PAYMENT OF UNRESTRICTED NON-PRESERVED AMOUNT**

Notwithstanding any other provisions in this Deed which may be construed to the contrary and subject to the Superannuation Law:

- (a) a Member may elect at any time to withdraw the whole or any part of the Unrestricted Non-Preserved Amount of that Member by giving notice to the Trustee in the form and manner determined by the Trustee; and
- (b) the minimum Unrestricted Non-Preserved Amount which may be withdrawn by a Member under clause 33(a) must be determined by the Trustee and notified to Members of the Fund.

## **34. PAYMENT OF ADDITIONAL BENEFITS**

Where a Member ceases to be a Member of the Fund, the Trustee may pay, in addition to amounts otherwise payable under this Deed, that part of the Fluctuation Account, which the

Trustee considers equitable, to the Member's Accumulation Account for purposes of payment of a Benefit.

35. RETENTION OF BENEFIT IN FUND

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may retain all or any part of any Benefit in the Fund until the Member or Beneficiary entitled to the Benefit requests that the Benefit is paid to that Member or Beneficiary or until they are required to be paid under the Superannuation Law or this Deed.

36. COMPULSORY PAYMENT OF BENEFITS

The Trustee of the Fund must pay a Member's Benefits as soon as practicable after the occurrence of any of the following:

- (a) the Member dies; or
- (b) payment of the Benefit is required under this Deed or the Superannuation Law, whichever occurs first.

37. VOLUNTARY PAYMENT OF BENEFITS

Subject to the Superannuation Law, a Member may elect to receive a Benefit on or after the occurrence of any of the following events:

- (a) if the Member Retires from Gainful Employment;
- (b) if the Member suffers Permanent Incapacity;
- (c) if the Member suffers Temporary Incapacity;
- (d) if the Member being a temporary resident permanently departs Australia in circumstances described in the SIS Regulations, including regulation 6.20A or 6.20B, and requests in writing the release of his or her Benefits;
- (e) if the Member's Gainful Employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member is terminated;
- (f) if the Member suffers Severe Financial Hardship;
- (g) if the Member attains age 65;
- (h) the Trustee determines that some or all of the Member's Benefit may be released on Compassionate Grounds;
- (i) if the Member attains Preservation Age; or
- (j) any other condition of release permitted by the Superannuation Law.

38. PENSION BENEFIT

The following provisions apply to the payment of a Pension:

- (a) Where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee may, subject to the Superannuation Law, provide a Benefit to the Member as any one or more types of Pension permitted by the Superannuation Law.
- (b) Subject to the Superannuation Law, where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee must provide the Pension under the



governing rules of the Fund (including, but not limiting, this Deed, trustee resolutions or any pension agreement).

- (c) Where an instalment of a Pension is payable in respect of a Member and the amount standing to the credit of the Member's relevant Pension is less than the instalment payable, the lesser amount must be paid and the Trustee's liability in respect of the payment of the Pension is discharged.
- (d) Notwithstanding clauses 38(a), 38(b) and 38(c), where a Benefit is payable as a Pension, the Trustee may at its discretion apply an amount representing the capital value of that Benefit in the purchase of an Annuity in its name and may arrange for payments under that Annuity to be made directly to the Member but may assign the Annuity to the Member if requested and if permitted by the Superannuation Law.

#### 39. REDUCTION OF MEMBER'S BENEFIT

- (a) Notwithstanding any other clause in this document, the Member's Benefit may, as the Trustee determines, be reduced by:
  - (i) all amounts, whether actual or contingent, owing by the Member to an Employer or to the Trustee at the time when the Benefit becomes payable or applicable in accordance with this Deed or the Superannuation Law;
  - (ii) the amount of any loss incurred by an Employer in consequence of the Member's proven fraud, dishonesty, misconduct or negligence; or
  - (iii) the amount of any costs of all proceedings, civil or criminal, incurred by an Employer in attempting to recover any amount owing by the Member to the Employer or in respect of his or her proven fraud, dishonesty, misconduct or negligence,

however this clause cannot be relied upon to reduce the Member's Benefit below the amount required in accordance with the Superannuation Law to be vested in the Member.

- (b) A statement in writing signed by an Employer and given to the Trustee setting out the amount owing by a Member to the Employer or the amounts of any loss or costs incurred by the Employer in respect of a Member and requesting that the Member's Benefit be reduced by that amount, is sufficient authority to the Trustee to reduce the amount of the Member's Benefit and the Trustee may pay to the relevant Employer all amounts actually owing or incurred and is entitled to retain any amount contingently owing pending the occurrence or non-occurrence of the contingency, whether the amount in question is dealt with under this clause or paid as a Benefit in respect of the relevant Member.

#### 40. STATEMENT OF UNCLAIMED BENEFITS

The Trustee must give to the Statutory Authority a statement of Unclaimed Benefits and must pay any Unclaimed Benefits to the Statutory Authority at the time and in the manner required by the Superannuation Law.

#### 41. LIMITATION ON PAYMENT

Notwithstanding any other clauses of this Deed, the Trustee must not pay any Benefits, or Benefits in excess of a certain amount, to Members, Dependents or Beneficiaries if that payment would cause the Fund to breach the Superannuation Law.

## 42. FORFEITED BENEFITS

### 42.1 Forfeiture

Benefits payable out of the Fund must, subject to the Superannuation Law, be forfeited if:

- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge those Benefits or part of those benefits;
- (b) the Member:
  - (i) commits an act of bankruptcy; or
  - (ii) becomes or is insolvent (including, without limiting the generality of the foregoing, if he signs an authority under section 188 of, or enters into any deed of assignment or deed of arrangement in pursuance of in Part X *Bankruptcy Act 1966* (Cth));
- (c) the Member's interest in any Benefit, 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;
- (d) the Member for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit or who, in the opinion of the Trustee is incapable of managing the person's affairs; or
- (e) the Member, in the opinion of the Trustee, commits any fraud or is guilty of dishonesty or defalcation.

### 42.2 Application of forfeited money

The whole of the Benefits forfeited by a person under clauses 42.1(a) to 42.1(e) above, may be applied by the Trustee for the benefit of a Member and his or her Dependants or any one or more of them as the Trustee determines.

### 42.3 Forfeiture Account

The Trustee has power at any time to establish a Forfeiture Account of the Fund and may transfer to the credit of the Forfeiture Account any amounts forfeited under the reasons above or otherwise forfeited under this Deed.

### 42.4 Treatment of money in Forfeiture Account

Whilst any moneys are held in the Forfeiture Account, they do not form part of any other Account and any income derived by the Fund in respect of moneys held in the Forfeiture Account must be credited to the Forfeiture Account.

### 42.5 Unclaimed Benefits Account

The Trustee may, subject to the Superannuation Law, treat as unclaimed, forfeit and transfer to the Unclaimed Benefits Account, any moneys in the Fund standing to the credit of any Member whose whereabouts are unknown to it and if, after making any enquiries it deems appropriate, it is unable to positively trace any person entitled to the benefit of those moneys.

## 43. DEATH BENEFITS

### 43.1 Application

This clause 43 applies to a Member's Benefit payable on or following the death of a Member under clause 36(a).

### **43.2 Payment if Non-Binding Death Benefit Nomination**

Subject to clause 43.3, a Member's Benefit may be paid or applied, on or following the death of the Member, as the Trustee decides subject always to the Superannuation Law including by way of one or more Annuities, one or more Income Streams or one or more Superannuation Lump Sums or any combination of those methods of payment (in each case upon the terms the Trustee decides) either:

- (a) to one or more of the Nominated Beneficiaries (if any) designated in the most recent Non-Binding Death Benefit Nomination made by the Member, or other Dependants of the Member and in the proportions that the Trustee decides; or
- (b) to one or more of the Legal Personal Representatives of the Member.

### **43.3 Payment if Binding Death Benefit Nomination**

If a Member made a Binding Death Benefit Nomination that at the date of death was valid under the Superannuation Law, any Benefit payable on or following the death of the Member must be paid by the Trustee in accordance with that Binding Death Benefit Nomination.

### **43.4 Commutation of Income Stream**

Notwithstanding any other clause of this Deed and subject to the Superannuation Law, the Trustee may, and must where required by the Superannuation Law, discharge its liability to a Member, Dependand or Beneficiary in respect of a Pension by paying to the Member, Dependand or Beneficiary a Superannuation Lump Sum equal to the amount standing to the relevant Pension in the Pension Account.

### **43.5 Anti-detriment**

The Trustee may (but is not obliged to) claim the benefit of anti-detriment provisions in the Taxation Act which allow tax paid on the Member's Contributions to be refunded to eligible Beneficiaries in the event of the Member's death.

## **44. DEATH BENEFIT NOMINATIONS**

### **44.1 Non-Binding Death Benefit Nomination**

A Member may at any time make a Non-Binding Death Benefit Nomination designating one or more Dependants or Legal Personal Representatives as a Nominated Beneficiary of any Benefit payable by the Trustee on or following the death of the Member however:

- (a) a Member wishing to designate a Nominated Beneficiary must give a written notice to the Trustee in a form as approved by the Trustee; and
- (b) subject to the Superannuation Law, that nomination is not binding on the Trustee.

### **44.2 Binding Death Benefit Nomination**

- (a) A Member may make a Binding Death Benefit Nomination to the Trustee that:
  - (i) is in writing;
  - (ii) is signed, and dated, by the Member in the presence of 2 witnesses, being persons:
    - (A) each of whom has turned 18 years; and
    - (B) neither of whom is a person mentioned in the notice; and
  - (iii) contains a declaration signed, and dated, by the witnesses stating that the notice was signed by the Member in their presence.

- (b) Subject to the Superannuation Law, a Member may in a Binding Death Benefit Nomination nominate:
  - (i) the person or persons to whom their Benefit must be paid so long as that person or each of those persons are a Legal Personal Representative or Dependant of the Member;
  - (ii) the proportions in which the Benefit is to be paid to that person or each of those persons; and
  - (iii) the manner in which those benefits must be paid to the person or each of those persons.
- (c) A Binding Death Benefit Nomination may be confirmed, amended or revoked at any time by the Member and is otherwise effective until revoked.
- (d) A Binding Death Benefit Nomination may be revoked by making a later valid Binding Death Benefit Nomination or by otherwise revoking it by notice in writing given to the Trustee.

45. PAYMENT IF NO BINDING DEATH BENEFIT NOMINATION

Subject to clause 43.3 and the Superannuation Law, any Benefit payable on the death of a Member may be paid or applied as the Trustee decides, by way of one or more Annuities, one or more Pensions or other periodical payment or by one or more Lump Sum payments or any combination of those methods of payment (in each such case upon the terms as the Trustee decides) either:

- (a) to one or more of the Nominated Beneficiaries (if any) designated in a Non-Binding Death Benefit Nomination made by the Member, or one or more of the other Dependents of the Member and in the proportions that the Trustee decides; or
- (b) to one or more of the Legal Personal Representatives of the Member.

46. PAYMENT IF BINDING DEATH BENEFIT NOMINATION IS INVALID OR INEFFECTIVE

Subject to the Superannuation Law, if a Member had made a Binding Death Benefit Nomination that at the date of death is invalid or ineffective, the Binding Death Benefit Nomination is treated as a Non-Binding Death Benefit Nomination made at the date of making the Binding Death Benefit Nomination whether or not validly or effectively binding at that date.

47. INFORMATION TO MEMBERS AND NON-MEMBER SPOUSES

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee must give the Member and the Non-Member Spouse with all notices and information, (in the appropriate form), required by the Superannuation Law.

48. TRUSTEE MAY CREATE NEW INTEREST FOR NON-MEMBER SPOUSE

- (a) The Trustee may admit a Non-Member Spouse in respect of a Payment Split as a Member:
  - (i) if the Non-Member Spouse requests the Trustee to do so in writing in accordance with the Superannuation Law and in the form prescribed by the Trustee; or
  - (ii) on its own initiative in the circumstances permitted by the Superannuation Law.
- (b) If the Trustee admits a Non-Member Spouse as a Member under clause 48, the Trustee must reduce the Member's Benefit Entitlement in respect of the Payment Split by the

amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

**49. NON-MEMBER SPOUSE MAY REQUEST TRANSFER OF INTEREST**

If the Non-Member Spouse in respect of a Payment Split is not admitted as a Member under clause 48, the Trustee must:

- (a) either:
  - (i) transfer or roll over the entitlement of the Non-Member Spouse to an Approved Benefit Arrangement; or
  - (ii) pay the entitlement of the Non-Member Spouse to the Non-Member Spouse if permitted or required by the Superannuation Law; and
- (b) reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

**50. FAMILY LAW FEES**

The Trustee may:

- (a) charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by the Family Law and for which the Trustee is entitled to charge fees; and
- (b) may recoup those fees in accordance with the Superannuation Law from:
  - (i) a Member's Benefit Entitlement; or
  - (ii) the entitlements of the Non-Member Spouse.

**51. SATISFACTION OF ENTITLEMENT**

- (a) The payment, transfer or roll over of the entitlement of a Non-Member Spouse in accordance with a Payment Split is a complete discharge of the Trustee in respect of any liability to that Non-Member Spouse and the Member in respect of that Non-Member Spouse for the amount paid, transferred or rolled over.
- (b) The Trustee may deduct from the amount to be paid, transferred or rolled over the amount of any Taxation that is calculated by the Trustee to be payable in respect of the entitlement of the Non-Member Spouse.

**52. TERMINATION**

**52.1 Events of termination**

The trusts declared cease and terminate and the Fund is wound up in accordance with this clause upon the happening of any of the following events:

- (a) if there are no Members in the Fund and the Trustee resolves to terminate the Fund;
- (b) all Members agree to terminate the Fund;
- (c) the Trustee decides that it would not be reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

**52.2 Notice to Members and Closing Date**

- (a) Upon the trusts ceasing and terminating under clause 52.1, the Trustee must give notice in writing to each Employer and the Members, if any, that the Fund shall be wound up on a

specified date, that date being no later than any date on which the Fund is required by clause 52.1(d) to be terminated ('Closing Date').

- (b) From the Closing Date:
  - (i) no further Contribution may be made by any Employer or any Member, other than arrears of Contributions due to the Closing Date; and
  - (ii) arrears of Contributions, if any, must be called in immediately.

### **52.3 Order of payment**

Upon the trusts ceasing and terminating under clause 52.1, the Trustee, subject to clause 52.7, must make provision out of the Fund (after meeting expenses and liabilities) as necessary to provide for payment of the following Benefits in the following order of priority:

- (a) payments which on or before the Closing Date had become payable to retired Members or Dependants;
- (b) payments to each Member who is still in employment and has attained his or her Normal Retirement Date equal to his or her Member's Accumulation Account;
- (c) payment to each Member who is still in the employment of the Employer and has not attained his or her Normal Retirement Date equal to his or her Benefit had he or she resigned immediately before the Closing Date; and
- (d) payment to each Member who is still in the employment of the Employer of that amount of the assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under clauses 52.3(b) and 52.3(c) as can be paid without being regarded as excessive amounts having regard to the Superannuation Law.

### **52.4 Payment if Member Dies**

Where a Member dies before receiving a Benefit to which he or she has become entitled under clause 52.3, that Benefit must be paid in accordance with clause 43.

### **52.5 Surplus**

If a surplus remains after providing Benefits for Members and their Dependants under clause 52.3, that surplus must, subject to the requirements of the Superannuation Law and clause 52.7, be paid by the Trustee to or for the benefit of:

- (a) any Members;
- (b) any former Members;
- (c) any Dependants of those Members or former Members;
- (d) the Legal Personal Representatives (in that capacity) of those Members, former Members or Dependants; or
- (e) any Employer,

as the Trustee determines and, if paid to or for the benefit of two or more persons, in the proportions as the Trustee determines, subject, in the case of clause 52.5(a) and 52.5(d), to clause 52.3.

### **52.6 Form of Payment**

Subject to clause 52.7, the payments to be made under clauses 52.3 and 52.5 may be made in cash, Policies, participation in any other Approved Benefits Arrangement or otherwise as determined by the Trustee, but shall not be payable to or for the benefit of a Member unless and until he ceases to be in the employment of the Employer other than for personal maintenance and support in case of hardship.

## **52.7 Payment to other Persons**

If any payment of Benefits under clauses 52.3 and 52.5 is required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of the Benefit which is required to be deferred and the Trustee may make any of the following arrangements with respect to the Benefits required to be deferred:

- (a) transfer the Benefit to another Complying Superannuation Fund if that Fund does not permit the payment of the Benefit before the attainment of the particular age or the specified event;
- (b) purchase an Annuity with the Benefits commencing no earlier than the particular age or specified event or which otherwise satisfies the Superannuation Law;
- (c) transfer the Benefits to an Approved Deposit Fund if that Fund does not permit the payment of the Benefit before the attainment of the particular age or the specified event;  
or
- (d) purchase a non-commutable Pension payable for life in the name of the Member but only if the Member has permanently retired from the employment.

## **53. AMENDMENT OF DEED**

### **53.1 Method Of Amendment**

- (a) Subject to clause 53.1(b) and 53.1(c) and the Superannuation Law, the Trustee may at any time by resolution or by written instrument amend, alter, vary, modify or delete any provisions of the Deed with immediate, prospective or, to the extent allowed by the law and with retrospective effect from time to time.
- (b) No reduction of the accrued Benefit of a Member may be made without their written consent.
- (c) No amendment may be made under clause 53.1(a) that would cause the trusts contained in the Deed to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made under clause 53.1(a) that would allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the governing rules provide and will continue to provide after the amendment that the Fund has as its sole or primary purpose, the provision of old-age pensions.

### **53.2 Notification of Members of Amendment**

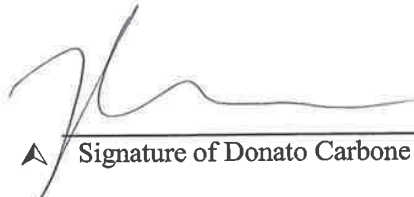
As soon as practicable after the Deed has been amended under clause 53.1, the Trustee shall give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the Member.

## **54. COUNTERPARTS**


This Deed is validly executed if executed in one or more counterparts.

EXECUTED as a deed.

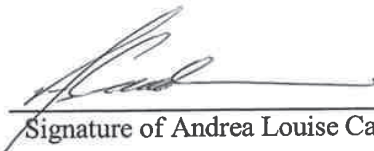
SIGNED SEALED AND DELIVERED  
by DONATO CARBONE in the presence of:

  
▲ Signature of Donato Carbone


  
▲ Signature of witness

  
▲ Name of witness (print)

SIGNED SEALED AND DELIVERED  
by ANDREA LOUISE CARBONE  
in the presence of:

  
▲ Signature of Andrea Louise Carbone

  
▲ Signature of witness

  
▲ Name of witness (print)