

INNOVATIVE FUND MANAGEMENT PTY. LTD.
SUPERANNUATION FUND



TRUST DEED

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THE APPENDIX

THIS TRUST DEED is made on the Date of Execution specified in the Appendix BETWEEN the person or persons named in the Appendix as the Founder (hereinafter called the "Founder") of the one part AND the person or persons named in the Appendix as the Trustees (hereinafter called the "Trustees") of the other part.

WHEREAS

- A. The Founder has decided to establish an indefinitely continuing superannuation fund (hereinafter called the "Fund") for the purpose of providing benefits as provided in this Deed for such Eligible Persons as become members thereof or for the Dependants of such Eligible Persons.
- B. The Founder has requested the Trustees to act as the Trustees of the Fund and the Trustees have consented so to act.

NOW THIS DEED WITNESSETH THAT the Fund, which shall be known by the name set forth in the Appendix and shall be deemed to have come into operation on the Commencing Date set forth in the Appendix, shall vest in and shall be controlled by the Trustees upon the trusts of this Deed.

IN WITNESS WHEREOF this Deed has been duly executed on the said Date of the Execution.

DEED.593

PART 1.

TRUST AND ADMINISTRATIVE PROVISIONS

DEFINITIONS AND INTERPRETATION

Definitions

1.1 IN the Deed the following words and expressions shall unless the context requires otherwise or the contrary intention appears have the following meanings:

"Account" means in relation to a Member the account established and maintained in the Fund for that Member pursuant to Clause 2.5.

"Act" means as is the appropriate context within the Deed the Income Tax Act, the Occupational Superannuation Standards Act and any regulations made pursuant to any such Act and any other law of the Commonwealth of Australia (including where applicable any determination, standard, ruling, announcement or guideline made or laid down by any Responsible Authority pursuant to any powers vested in it thereby) which relates to or affects an Approved Superannuation Agreement or which the Fund and/or the Trustees must comply or act in accordance with or with regard to in order to obtain or continue to obtain what the Trustees consider to be a relevant concession or to avoid a liability for what the Trustees consider to be a relevant penalty or obligation.

"Actuary" means a person who is a Fellow of the Institute of Actuaries of Australia or of any body formed in reconstruction of or in succession to that Institute and includes a person as so defined in the Act.

"Alternate Trustee" means an alternate appointed in respect of a Trustee pursuant to Clause 1.7 hereof.

"Appendix" means the Appendix contained at the end of Part 2 of the Deed.

"Approved Deposit Fund" means an Approved Deposit Fund as defined pursuant to the Act.

"Approved Superannuation Agreement" means in relation to a Member any agreement or requirement entered into by or required of the Employer under which the Employer agrees or is required to pay contributions to the Fund (whether or not such agreement or requirement is ratified by a decision handed down by an Industrial Authority) and which is declared by the Founder or Employer to be an Approved Superannuation Agreement for the purposes of the Deed.

"Associated Employer" means any person who has been admitted to participation in the Fund as provided in Clause 1.13 of this Deed and who has not ceased to participate in the Fund as provided in Clause 1.14 or 1.15 and includes any person carrying on business in succession thereto or in amalgamation therewith.

"Auditor" means a person registered under the Companies Act or Code of the Commonwealth of Australia or of any State or Territory thereof or any other person whose appointment would not breach any requirement of the Act, and for any particular purpose under the Deed, "the Auditor" means the person appointed from time to time by the Trustees as Auditor to the Fund pursuant to Clause 1.8 of the Deed.

"Balance Date" means the Balance Date referred to in the Appendix or such other date as the Trustees shall determine to be the Balance Date in any particular year.

"Commencing Date" means the Commencing Date referred to in the Appendix.

"Deed" means this Trust Deed as amended from time to time.

"Dependant" means in relation to a Member any one or more of the following:

- (a) the spouse widow or widower of the Member;
- (b) any child of the Member including any step-child, any child recognised by the Trustees as an adopted child and any child of the Member born after the death of the Member; and
- (c) any person who is recognised by the Trustees as the de facto spouse of the Member and any other person who in the opinion of the Trustees is at the relevant date (or in the case of a deceased Member was at the time of his/her death) wholly or partially dependent on the Member or who has or had at the relevant date a legal right to look to the Member for support.

"Determined Interest Rate" means a rate of interest determined in each year as being that which the Trustees consider to be a fair rate to be applied for the purposes of the Fund in that year having regard to the returns achieved on the investments of the Fund from time to time and to such other matters as the Trustees determine to be relevant for the purposes of such determination.

"Eligible Bank" means -

- (a) a savings bank or trading bank as defined by sub-section 5(1) of the Banking Act 1959; or
- (b) a public authority constituted by a law of any State or Territory of the Commonwealth of Australia being a public authority that carries on banking business; or
- (c) any other person or organisation which the Responsible Authority may at any time declare to be an Eligible Bank for the purposes of the Regulations.

"**Eligible Person**" means a natural person who has attained age eighteen and who is engaged in Remunerative Employment or who has been engaged in Remunerative Employment and is a Transferred Retiree Member or any other person who qualifies under the Act to be a member of the Fund.

"**Eligible Spouse**" means in relation to a deceased Pensioner the surviving spouse of the Pensioner **PROVIDED THAT** the Trustees may in their absolute discretion deem a person to be the spouse of a deceased Pensioner who although not legally married to the Pensioner was in the opinion of the Trustees at the date of death of the Pensioner either –

- (i) living with the Pensioner on a permanent bona fide domestic basis if the Pensioner is survived by a dependent child of that union; or
- (ii) living with the Pensioner as his or her spouse on a permanent and bona fide domestic basis for a continuous period of not less than three years immediately prior to his/her death or for such shorter period as the Trustees in their absolute discretion may decide;

and was wholly or partially dependent on the Pensioner.

"**Employee**" means an Eligible Person to whom an Employer pays "salary and wages" as defined in the Act other than a person for whom the Employer is exempted under the Act from making contributions under an Approved Superannuation Agreement where such person is denoted by the Employer not to be an Employee.

"**Employer**" means any employer in whose service an Eligible Person is for the time being engaged and which agrees to assume the obligations of an employer under the Deed or any person carrying on business in succession thereto or in amalgamation therewith or any Associated Employer of such an Employer.

"**Founder**" means the person first named in the Deed as the Founder or any person who subsequently assumes the office of Founder under the Deed.

"**Income Tax Act**" means the Income Tax Assessment Act 1936 of the Commonwealth of Australia as amended from time to time.

"**Industrial Authority**" means as the case may be -

- (a) any board, court, tribunal, body or person having authority under any law of the Commonwealth of Australia to exercise any power of conciliation or arbitration in relation to industrial disputes; or
- (b) any board or court of conciliation or arbitration, or tribunal body or person having authority under any law of any State or Territory of the Commonwealth of Australia to exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of that State or Territory; or
- (c) any special board constituted under the law of any State or Territory of the Commonwealth of Australia relating to factories.

"**Insurance**" includes assurance and an annuity.

"**Insurer**" means any insurer or assurer with whom the Trustees effect a policy or policies of insurance or assurance in accordance with paragraph (i) of sub-clause (3) of Clause 1.12 of the Deed.

"**Member**" means an Eligible Person who has been admitted to membership of the Fund in accordance with the Deed **PROVIDED THAT** such a person shall cease to be a Member in the event of his/her death or when all benefits to which he could become entitled under the Deed have been paid provided, forfeited or terminated in accordance with the Deed.

"**Normal Retirement Date**" means the Normal Retirement Date of the Member referred to in the Appendix or such other date as the Member and the Founder shall agree shall be the Normal Retirement Date of the Member for the purposes of the Deed.

"Occupational Superannuation Standards Act" means the Occupational Superannuation Standards Act 1987 of the Commonwealth of Australia as amended from time to time.

"Pensioner" means a Member who has retired from Remunerative Employment and who is, or in the case of a deceased Pensioner was, in receipt of a pension from the Fund.

"Person" and words importing a natural person also include a body corporate and any other person recognised at law, a partnership and any other group or association of persons, but the words "natural person" shall be given their normal meaning.

"Qualified Adviser" means an accountant, auditor, barrister, solicitor, actuary, medical practitioner or other professional person considered by the Trustees in good faith to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise howsoever.

"Quorum of Trustees" means for the purposes of the relevant provisions of Clause 1.4 of the Deed:-

- (a) where the Trustee is a sole natural person, that Trustee; or
- (b) where the Trustee is a sole corporate Trustee, that Trustee; or
- (c) where the Trustee consists of more than one person whether corporate or individual or both, the greater of:-
 - (i) two Trustees; and
 - (ii) not less than two thirds of the Trustees in office for the time being

PROVIDED THAT a Quorum of Trustees shall only be properly formed if the composition thereof is such that it would not in the opinion of the Trustees cause the Fund to be in breach of any relevant requirement of the Act.

"Recognised Scheme" means a scheme or arrangement (excluding the Fund) which has governmental or legislative or trade union support or recognition or which is established or maintained pursuant to or in connection with an industrial agreement or like arrangement (excluding an Approved Superannuation Agreement) whether or not an Employer is a party to such agreement, arrangement or undertaking.

"Remunerative Employment" means any business, trade, profession, vocation, calling, occupation, or employment for payment, remuneration or other reward in money or moneys worth or in accordance with the Act.

"Reserve Account" means the Account established and maintained in the Fund pursuant to Clause 2.14 of the Deed.

"Responsible Authority" means any governmental or non governmental authority responsible for administering the Act.

"Secretary" means the person (if any) appointed from time to time by the Trustees as Secretary to the Fund pursuant to Clause 1.9 of the Deed.

"Total and Permanent Disablement" in relation to a Member, means disablement due to an illness or injury as a result of which -

- (a) the Member has been continuously absent from Remunerative Employment for a period of at least six months (or such lesser period as the Trustees may determine either generally or in any particular case); and

- (b) in the opinion of the Trustees after consideration of information and advice satisfactory to them, the Member is incapacitated to such an extent as render the Member unlikely ever to engage or work in any Remunerative Employment for which the Member is reasonably qualified by education, training or experience;

and "Totally and Permanently Disabled" shall have a corresponding meaning **PROVIDED THAT**, if the Trustees pursuant to the Deed have effected a policy of insurance under which insurance is or may become payable in the event of the permanent total disablement of any Member or group of Members and the circumstances in which a person would be declared permanently and totally disabled under such policy are in the opinion of the Trustees similar to Total and Permanent Disablement as defined as aforesaid, then the Trustees (and shall if so directed by the Founder) shall determine that the meaning of Total and Permanent Disablement shall in respect of the Member be modified in the manner and to the extent necessary (as determined by the Trustees) to ensure that the Member shall only be considered to be totally and permanently disabled in the same circumstances as a person would be declared permanently and totally disabled under such a Policy.

"Transferred Retiree Member" means a person defined as such under the provisions of the Act.

"Trustees" means the Trustees named in the Appendix as the Trustees for the time being of the Fund and any additional or substituted Trustees.

Interpretation

- 1.2 (1) **EXCEPT** where a subsequent Part of the Deed expressly provides otherwise, if there is a conflict between a provision of Part 1 of the Deed and a provision of any other Part of the Deed, the relevant provision of Part 1 of the Deed shall prevail.

- (2) The headings in the Deed are for convenience only and shall not affect the interpretation thereof.
- (3) In the Deed words importing the singular number include the plural and vice versa and words importing one gender include the other genders unless the context requires otherwise or the contrary intention appears.
- (4) References to any legislation, regulation or provision thereof include that legislation, regulation or provision as amended or re-enacted from time to time and any legislation, regulation or provision intended to replace the same in whole or in part whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any legislation, regulation or provision approved by another such authority.
- (5) If any dispute arises as to the interpretation of any of the provisions of the Deed or as to the rights or obligations of a Member or any other person hereunder, then (except to the extent otherwise expressly provided in the Deed) the decision of the Trustees shall be final and binding on all interested persons.
- (6) Whilst for convenience a particular word or group of words defined in the Deed may commence with capital or lower case letters, failure to use capital or lower case letters in that word or group of words used elsewhere in the Deed does not of itself mean that that word or group of words has a meaning different from the meaning assigned thereto in the relevant definition.

TRUSTEES

Appointment of Trustees

- 1.3 (1) SUBJECT** to the other provisions of this Clause and the requirements of the Act, the Trustees of the Fund may consist of one or more;

- (a) natural persons; or
 - (b) corporations; or
 - (c) a combination of (a) and (b) above.
- (2) Any person or combination of persons may only be appointed as Trustees of the Fund so long as that person's or combination of persons'-
- (a) appointment to and removal from office is effected in accordance with the Act in so far as the Act relates to and governs the appointment and removal of Trustees; and
 - (b) holding of such office will not prejudice the granting or continuance of any concession for or in respect of the Fund under the Act and will not cause the Fund to be in breach of what the Founder reasonably believes to be a relevant requirement of the Act.
- (3) The Founder shall where applicable take such action as it considers necessary and expedient in order to ensure that the requirements of sub-clauses (1) and (2) are satisfied at all times **PROVIDED THAT** the Founder shall not be responsible for or in respect of any loss or damage arising out of or in connection with any person acting as a Trustee, while that person does not satisfy the requirements of the said sub-clauses (1) and (2) **PROVIDED FURTHER THAT** nothing herein shall render void, voidable or unenforceable anything done by or on behalf of a person who is a Trustee during any period when the requirements of the said sub-clauses (1) and (2) are not satisfied.
- (4) Without in any way limiting the generality of sub-clauses (1) and (2) of this Clause, an office of Trustee shall become vacant upon -
- (a) the retirement of a Trustee from office by notice in writing given:

- (i) to the Founder; and
 - (ii) where the Trustee is one of a number of Trustees and is a natural person, to the other Trustees;
- (b) in the case of a corporate Trustee
- (i) subject to obtaining the written consent of at least seventy five percent (75%) of the members for the time being, its removal from Office by the Founder; or
 - (ii) the day which is thirty (30) days after the date on which the Founder receives written notice signed by at least seventy five percent (75%) of the members for the time being requesting its removal from Office; or
 - (iii) the appointment of a receiver, receiver and manager or liquidator in respect of each or the whole or any part of its property or the approval by a court of a scheme of arrangement providing for its dissolution;
- (c) in the case of a natural person:
- (i) subject to obtaining the written consent of at least seventy five percent (75%) of the members for the time being, his/her removal from Office by the Founder; or
 - (ii) the day which is thirty (30) days after the date on which the Founder receives written notice signed by at least seventy five percent (75%) of the members for the time being requesting his/her removal from office; or

- (iii) the date being the commencement date of his/her bankruptcy or the date upon which any scheme of arrangement or other form of insolvency arrangement with his/her creditors shall come into effect; or
 - (iv) the date on which his/her appointment to the Office of Trustee ceases for any reason not otherwise herein provided;
 - (d) the disqualification of the Trustee from the Office of Trustee by operation of law.
 - (e) the ineligibility of the Trustee in accordance with the requirements of the Act.
- (5) Subject always to sub-clauses (1) and (2) of this Clause, where an Office of Trustee shall become vacant the Founder shall forthwith appoint a person to replace the vacated Trustee **PROVIDED THAT** such appointment shall only commence upon the written ratification of such appointment by not less than seventy-five per centum (75%) of the Members for the time being of the Fund.

Proceedings of Trustees

- 1.4 (1) **WHERE** the Trustee of the Fund is one natural person then that person shall keep written records of his/her decisions and actions as Trustee of the Fund and the provisions of sub-clauses (2), (3), (4) and (5) of this Clause shall not have specific application.
- (2) (a) Except as otherwise provided herein, the Trustees may meet adjourn and regulate their meeting as they see fit and a meeting of the Trustees for the time being at which a Quorum of Trustees competent to exercise all or any of the powers exercisable by the Trustees generally.

- (b) Except as otherwise expressly provided for in the Deed, all questions arising at a meeting of Trustees, shall be determined by resolution and no such resolution shall be effective unless carried by a majority comprising at least a Quorum of Trustees.
 - (c) A written resolution signed by a Quorum of Trustees shall be as effective as an effective resolution passed at a meeting of Trustees duly convened and held and a copy of any such written resolution shall be given to each Trustee who was not a signatory thereto as soon as reasonably practicable after it is made.
 - (d) A Trustee may participate in a meeting of Trustees by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in such a meeting in this manner shall be deemed to constitute presence in person at such meeting.
- (3) (a) A Quorum of Trustees may by resolution appoint a Trustee to be Chairman of Trustees. A Trustee so appointed as Chairman of Trustees shall hold office as Chairman until -
- (i) he retires as Chairman by written notice given to the other Trustees;
 - (ii) he ceases to be a Trustee; or
 - (iii) he is removed as Chairman by a written notice given to him/her pursuant to or in the form of a resolution passed by at least a Quorum of Trustees.
- (b) The Chairman of Trustees (if any) shall act as Chairman of each meeting of Trustees attended by him/her. If the Chairman of Trustees is not present in person at a meeting of Trustees or if at the time of a meeting there is no Chairman of Trustees, a Trustee shall be appointed by a resolution of those Trustees present, to act as Chairman of that meeting.

- (4) Each Trustee present in person at a meeting of Trustees shall have one deliberative vote on any question.
- (5) An individual Trustee or the Secretary (if any) with the approval of a Trustee may at any time convene a meeting of Trustees by giving not less than 48 hours prior written notice to each of the Trustees or other Trustees, as the case may require **PROVIDED THAT** a Quorum of Trustees, may determine that a meeting of Trustees shall be held at such shorter notice as they consider appropriate or shall be held without prior notice to the remaining Trustees.
- (6) The Trustees shall keep or cause to be kept proper minutes which shall be kept and entered in a book provided for that purpose and the minutes of any meeting if signed by the chairman of such meeting or by the chairman of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated herein.
- (7) A Trustee who is absent or is about to be absent from Australia or who is temporarily unable due to illness or any other reason to attend to his/her duties as Trustee may with the consent of the Founder appoint any person to be his/her Alternate Trustee for the purposes of the Fund during any absence from Australia or during any temporary inability as aforesaid and such Alternate Trustee during such absence or temporary inability or until such appointment is revoked by the said Trustee or by the Founder may exercise all or any of the powers of the Trustee by whom such Alternate Trustee was appointed **PROVIDED THAT** if a Trustee in respect of whom an Alternate Trustee is appointed pursuant to this sub-clause shall cease to be a Trustee for any reason during any such absence or temporary inability then that Alternate Trustee's appointment shall be deemed to have been automatically revoked.

General Powers of Trustees

- 1.5 (1) **EXCEPT** to the extent otherwise expressly provided in the Deed, the Trustees have in the exercise or non-exercise or partial exercise of each

and every power exercisable by the Trustees an absolute and uncontrolled discretion and are not bound to give to any person any reason for or explanation of their exercise, non-exercise or partial exercise of any such power. The powers conferred on or exercisable by the Trustees under the Deed are additional to and not in substitution for the powers conferred on or exercisable by them at law.

- (2) (a) The Trustees shall have the complete management and control of all proceedings matters and things in connection with the Fund and, without derogating from any other provision of the Deed, may do all acts and things which they consider necessary desirable or expedient for the proper administration maintenance and preservation of the Fund or any part thereof and in the exercise and performance of their powers and obligations under the Deed.
- (b) Without limiting the generality of paragraph (a) hereof or any other provisions of the Deed, the Trustees shall have the following powers, that is to say power –
 - (i) to appoint remove or suspend custodians and managers (including custodians and investment managers in respect of all or any of the investments of the Fund), administrators, clerks, agents, representatives, nominees and other servants and delegates; appoint them for permanent, temporary or special services; determine their powers and duties and fix and pay from the Fund their salaries, emoluments and charges, and require security from any such person in such instances and to such amount as the Trustees may think fit;
 - (ii) to institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund or the Deed generally and also to compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;

- (iii) to refer any claim or demand by or against the Trustees of the Fund to arbitration and observe and perform the award of the arbitrator;
- (iv) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (v) to determine who shall be entitled to give and sign in respect of the Fund or any part thereof receipts, acceptances, endorsements, releases, contracts and other documents (and the receipt of the Trustees or a duly authorised delegate of the Trustees is a sufficient discharge to the person to whom it is given);
- (vi) to open bank accounts and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (vii) to act on the advice or opinion of any Qualified Adviser (whether or not such advice or opinion was obtained by the Trustees) in relation to any relevant matter or question without being liable to any person in respect of anything done or omitted to be done by the Trustees in good faith based on such advice or opinion;
- (viii) to give such undertakings and indemnities, enter into such contracts and incur all such obligations relating to the Fund or any part thereof as they think fit, including without limitation giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustees or a delegate thereof in connection with the Fund and to secure the same by charge or mortgage of all or part of the Fund; and

- (ix) to make rules and adopt procedures in relation to the calculation and rounding-off of contributions, benefits, interest and other relevant amounts, including where applicable determining the basis upon which interest will be compounded.

Delegation by Trustees

- 1.6 (1) THE** Trustees may delegate any power exercisable by the Trustees (including a power which they have a duty to exercise or perform and the power of delegation) to any person in such manner and upon such terms and conditions as they think fit. The Trustees may vary or revoke any such delegation as they think fit and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.
- (2) NOTWITHSTANDING** anything to the contrary contained in Clause 1.16(1) if the Founder ceases to carry on business or an order is made or an effective resolution is passed for the winding up of the Founder then in lieu of effecting a dissolution of the Fund pursuant to the said Clause 1.16 -
- (a) the other Employers may with the approval of the Trustees (if applicable) agree between them that one of their number shall take the place of and assume the role of the Founder for the purposes of the Deed; or
 - (b) if no agreement is reached pursuant to paragraph (a) hereof within 30 days of the Termination Date referred to in Clause 1.16(1) then the Trustees or (if there are no Trustees appointed) the liquidator of the Founder (hereinafter called the "Authorised Person") may make suitable arrangements for the administration of the Fund as a closed fund in which event the moneys and other assets of the Fund shall be held subject to the provisions of the Deed and dealt with in accordance with sub-clause (3) of Clause 2.3 as if each of the Employers had given notice of its decision to terminate its contributions to the Fund pursuant to sub-clause (1) thereof;

and where the Authorised Person makes the arrangements as aforesaid then for the purposes of the Deed there shall be deemed to be vested in the Authorised Person the power of appointment of Trustees of the Fund for the purposes of Clause 1.3 so long as such power can be exercised in such a manner as will not in the opinion of the Authorised Person in any way prejudice the concessions granted or available to or in respect of the Fund under the Act or cause the Fund to be in breach of the provisions of the Act governing the appointment of Trustees under superannuation funds **PROVIDED THAT** nothing in this sub-clause shall prevent the Trustees

- (i) in any case where it is impracticable to continue to operate the Fund as a closed fund from effecting a dissolutions of the fund pursuant to Clause 1.16; or
- (ii) in any case where the circumstances so warrant from reactivating the Fund.

All powers authorities and discretions vested in the Founder (other than those already vested in the Trustees as a result of the operation of this Clause) shall where there is no Founder be deemed for the purposes of facilitating the administration of the Fund to be vested in the Trustees until such time (if any) as the role of the Founder is re-assumed under the Deed.

- (3) IF at any time there are no Members and in the opinion of the Trustees all benefits which could become payable from the Fund to or in respect of any former Member or other person have been paid and all liabilities under the Fund in respect thereof fully discharged then the Trustees may with the consent of the Founder determine to terminate the Fund and in this event the Fund shall be dissolved and any moneys or other assets then remaining in the Fund after the payment of any expenses incurred by the Fund in the execution hereof shall be realised and the proceeds distributed to the Employers in such shares as the Founder shall determine.

Protection and Indemnity of Trustees

- 1.7 (1) NO Trustee or Alternate Trustee shall be liable for or in respect of (and a Trustee shall be indemnified out of the Fund against) any claim, liability, cost, loss, damage or expense whatsoever incurred or arising in connection with any act, omission or mistake in connection with the Deed or the Fund or the exercise or performance of that person's powers and duties generally (including without limitation any matter falling within sub-clause (2) of this Clause) **EXCEPT** to the extent that such claim, liability, cost, loss, damage or expense is a result of an act, omission or mistake involving that person's own personal fraud or wilful misconduct, wilful neglect or wilful default.
- (2) Subject to sub-clause (1) of this Clause, the Trustees shall not be liable or responsible for and shall be indemnified out of the Fund in respect of any claim, liability, cost, loss, damage or expense arising in connection with -
- (a) the insufficiency of or deficiency in any manner or form of investment in which moneys of the Fund may be invested pursuant hereto;
 - (b) the bankruptcy or insolvency of or fraudulent or tortuous act by any servant or delegate of the Trustees or any person with whom any investment may be deposited;
 - (c) the payment of an amount or benefit to a person reasonably believed to be entitled thereto but who is in fact not so entitled; or
 - (d) any action taken or thing suffered in reliance upon any document, record, authority, representation, statement or evidence reasonably believed by the Trustees or their servant or delegate in good faith to be valid and effective.

Accounts and Audit

- 1.8 THE Trustees shall maintain or cause to be maintained such records and accounts and in such form as shall be necessary to satisfy the requirements of the Deed or any relevant requirement of the Act and such other records and accounts as the Trustees consider to be necessary or desirable including, if required, clearly recording and identifying the amount of benefits which have been vested and/or preserved and clearly identifying the amount of benefits which are required by the Act or an Approved Superannuation Agreement to be vested and/or preserved so as to not adversely affect the granting or continuance of any relevant concession or cause the Fund or the Trustee to be liable for a penalty or obligation for which it would not otherwise be liable. The records and accounts of the Fund shall be audited by an Auditor duly appointed by the Trustees and the Auditor shall have access to such papers accounts and documents connected with the Fund as the Trustees consider should be accessible to him/her and shall certify to the Trustees the result of such audit in writing. The appointment of the Auditor shall be on such terms as the Trustees may think fit and the Trustees may remove any Auditor and appoint another in his/her stead **PROVIDED THAT** no such appointment shall be made hereunder which would cause the Trustees to be in breach of any relevant requirement of the Act.

Appointment of Secretary

- 1.9 THE Trustees may appoint a Secretary to the Fund. Any such Secretary shall be a person who is nominated by the Trustees and approved by the Founder and may be an officer of any of the Trustees. Any such appointment shall be on such terms as the Trustees may think fit and the Trustees may remove any such Secretary and may appoint another in his/her stead. Any such Secretary shall perform such duties and have such powers as are provided by the Deed together with such other duties and powers as the Trustees may from time to time determine.

Expenses

1.10 THE Trustees shall pay out of the Fund all expenses of and incidental to the management and administration thereof **PROVIDED THAT** nothing in this Clause shall vest in the Founder or a Member any obligation to pay any part of such expenses in addition to normal contributions to the Fund.

THE FUND

Composition of the Fund

1.11 THE Fund shall comprise -

- (a) contributions made by Members pursuant to the Deed;
- (b) contributions made by any of the Employers pursuant to the Deed;
- (c) any other moneys or assets paid or transferred to the Trustees pursuant to the Deed;
- (d) the income arising from investments;
- (e) any accretions to or profits on realisation of investments; and
- (f) any other moneys assets policies of insurance or assurance or investments which become subject to the trusts of the Deed.

Investment of Fund

1.12 (1) THE Trustees may from time to time and in the name of or under the control of the Trustees or in the name of any nominee or by or through a trustee (whether or not such nominee or trustee shall be a nominee or

trustee for the Trustees alone or for the Trustees and other persons) selected by the Trustees invest the whole or any part or parts of the moneys or assets of the Fund not required for any other purpose in any investment or manner of investment (whether in Australia or elsewhere or whether involving liability or not) which the Trustees consider to be a suitable investment or manner of investment for the Fund including but without limiting the generality of the foregoing in any one or more of the following

- (a) any investment from time to time authorised by the laws of the Commonwealth of Australia or any of its States or Territories for the investment of trust moneys;
- (b) on deposit with any trading or savings bank in Australia or with any dealer authorised or approved by the Reserve Bank of Australia to operate in the official short term money market, or with any firm or company (including any one or more of the Employers) either with or without security;
- (c) in the acquisition by original subscription or by purchase or otherwise of fully or partly paid shares, stock, stock options, debenture stock, bonds, notes (secured or unsecured) or other securities or obligations howsoever called in or of any company (including any one or more of the Employers);
- (d) in the acquisition or purchase of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible) or other scheme in the nature of a unit trust;

- (e) in the acquisition or purchase of any property (whether real or personal) or any interest in property whether or not such property or interest in property is subject to any mortgage or charge and notwithstanding that such property or interest in property may be required or purchased for the profit which may be expected whether from resale or otherwise and that such property or interest in property is not producing income at the date it is acquired or purchased;
- (f) in mortgages over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise of existing mortgages;

and the Trustees may vary or transpose or convert any such investments into or for another or others of the investments hereby authorised.

- (2) The Trustees may underwrite or sub-underwrite or join with others in underwriting or sub-underwriting the subscription of any of the investments authorised by sub-clause (1) of this Clause and may in the exercise of their powers of delegation under Clause 1.6 give to any investment manager appointed pursuant to sub-clause (2) (b) (i) of Clause 1.5 general authority to enter into and carry out underwriting or sub-underwriting agreements and the like whether for the Fund alone or for the Fund in conjunction with other funds and institutions.
- (3) Without in any way limiting the generality of the powers vested in the Trustees hereby and in particular under Clause 1.5 the Trustees shall have the following additional powers and may exercise all or any of such additional powers at any time and from time to time and to such extent as may seem to the Trustees to be desirable –
 - (a) to acquire any of the investments referred to in sub-clause (1) of this Clause alone or in partnership or association with any other person;

- (b) to institute prosecute and execute legal proceedings of any kind in any court including but not limited to proceedings to recover possession of any property or to sue for and recover rent or damages or to enforce any contract with power to abandon settle compromise and release any such proceedings when deemed expedient;
- (c) to pay and discharge out of the Fund such money as the Trustees may think proper to expend in repairing painting altering rebuilding improving and generally maintaining any property (whether freehold or leasehold) or premises for the time being comprising part of the Fund and all rates taxes costs charges insurance premiums expenses and outgoings of whatever nature payable in connection with the maintenance upkeep and management of such property or premises;
- (d) to lease or sub-lease any property (whether real or personal) comprising the Fund or any part or parts thereof for such period or periods at such rent or rents and with such powers rights and privileges and subject to such terms and conditions and stipulations as the Trustees may consider expedient and to accept surrenders of or otherwise determine such leases or sub-leases;
- (e) to sell or otherwise dispose of any property comprising the Fund or any part or parts thereof at such price or prices and upon such terms and conditions and stipulations and subject to such restrictions or rights and in such manner and by such means as the Trustees may consider expedient and upon any such sale or apart therefrom to grant easements and other rights;
- (f) to guarantee and to give indemnities in respect of any obligation assumed or undertaken or to be assumed or undertaken by a nominee or trustee selected by the Trustees pursuant to sub-clause (1) of this Clause in connection with any investment hereby authorised made or to be made by the Trustees in the name of such

nominee or by or through such trustee **PROVIDED THAT** where such nominee or trustee holds or will hold such investment for the Trustees and other persons the guarantee or indemnity given or granted by the Trustees pursuant to this paragraph (f) shall not exceed the liability attaching to the Trustees' proportionate interest in the investment held or to be held by the nominee or trustee as aforesaid;

- (g) to give all such undertakings and enter into such contracts and incur all such obligations relating to the Fund or any part or parts thereof as the Trustees think fit;
 - (h) to employ such managers staff and servants and engage such contractors and professional services as may be considered necessary or desirable;
 - (i) to effect policies of insurance or assurance to provide for all or any part of the benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender vary or assign or otherwise deal with any such policy as the Trustees think fit or
 - (j) to give proxies and powers of attorney (with or without powers of substitution) and appoint representatives for voting or acting on behalf of the Trustees in relation to any property comprising part of the Fund.
- (4) Notwithstanding anything expressed or implied to the contrary in this Clause or elsewhere in the Deed -
- (a) the moneys and assets of the Fund shall be invested in such manner and form as in the opinion of the Trustees and the Founder, will not prejudice the granting or continuance of any concession in respect

of the Fund under the Act or cause the Fund to be in breach of any relevant requirement under the Act;

- (b) the Trustees shall not borrow or raise money secured against any part of the Fund except for temporary purposes in order to ensure that the benefits are properly provided in accordance with the Deed and then only by means of an overdraft with an Eligible bank; and
- (c) no loans shall be made out of the Fund to any Member of the Fund other than those loans for which the Act makes provision and/or which the Trustees consider do not adversely affect the granting or continuance of any relevant concession or cause the Fund or the Trustees to be liable for a penalty or obligation for which it would not otherwise be liable.

ASSOCIATED EMPLOYERS

Admission of Associated Employers

1.13 THE Trustees may with the approval of the Founder enter into an agreement in such form as the Founder shall determine (subject to any special terms which may be prescribed by the Founder for inclusion in the agreement) with any person which the Founder deems it is desirable and convenient to include in the Fund for that person to become an Associated Employer and such of the Employees of that Associated Employer as become eligible as provided in the Deed shall be eligible to participate in the Fund.

Release of Associated Employers

1.14 THE Trustees shall at the request of the Founder release an Associated Employer and its Employees who are Members from participation in the Fund as from a date to be determined by the Trustees upon such terms and conditions as the Trustees shall determine and thereupon the interest in the Fund of such Associated Employer and its Employees who are Members and their Dependants shall be

ascertained by the Trustees and dealt with in such manner as the Trustees and such Associated Employer shall consider equitable **PROVIDED THAT** no provision shall be made for the payment of a benefit to any such Employee while he remains in the service of such Associated Employer other than for the support and maintenance of that Employee and/or his/her Dependants for the purpose of relieving hardship.

Liquidation of Associated Employers

1.15 IF an Associated Employer shall from any cause whatsoever cease to carry on business or an order be made or an effective resolution passed for the winding up of an Associated Employer (unless such winding up shall be for the purposes of reconstruction or amalgamation in which event the new employer or employers shall take the place of that Associated Employer in the Fund) the interest in the Fund of such Associated Employer and its Employees who are Members and their Dependants shall as from the date of the happening of the appropriate event be ascertained by the Trustees and dealt with in such manner as the Trustees shall consider equitable for the benefit of the Members for the time being of the Fund **PROVIDED THAT** the benefits to be provided hereunder shall be in such form and shall be provided by such arrangements as the Trustees shall determine and each of the aforesaid Employees shall accept the benefits allotted to him/her and his/her Dependants by the Trustees in full discharge of all claims whatsoever in the respect of any rights or benefits under the Deed or otherwise in connection with or arising out of the Fund and all decisions of the Trustees in respect of any benefit shall be final and binding on all interested persons.

CLOSURE

Closure of the Fund

1.16 (1) **THE** Founder or, subject to the approval of the Founder the Trustees, may determine to close the Fund from a certain date and in such event no further Member shall be admitted after that date and no further contributions or other amounts shall be accepted from any Member or other person after that date but otherwise the Trustees shall continue to

administer the Fund in accordance with the provisions of the Deed until all benefits which could become payable to or in respect of Members and Dependants thereof have been paid and all moneys remaining in the Reserve Account have been applied in accordance with the Deed, and the Fund shall then be deemed to be terminated and the Trustees shall be discharged.

- (2) **NOTWITHSTANDING** anything to the contrary contained in Clause 1.16 (1) if the Founder ceases to carry on business or an order is made or an effective resolution is passed for the winding up of the Founder then -
- (a) the other Employers may with the approval of the Trustees (if applicable) agree between them that one of their number shall take the place of and assume the role of the Founder for the purposes of the Deed; or
 - (b) if no agreement is reached pursuant to paragraph (a) hereof within 30 days of the Termination Date referred to in Clause 1.16 (1) then the Trustees or if there are no Trustees appointed the liquidator of the Founder (hereinafter called the "Authorised Person") may make suitable arrangements for the administration of the Fund as a closed fund in which event the moneys and other assets of the Fund shall be held subject to the provisions of the Deed and dealt with in accordance with sub-clause (3) of Clause 2.3 as if each of the Employers had given notice of its decision to terminate its contributions to the Fund pursuant to sub-clause (1) thereof;

and where the Authorised Person makes the arrangements as aforesaid then for the purposes of the Deed there shall be deemed to be vested in the Authorised Person the power of appointment of Trustees of the Fund for the purposes of Clause 1.3 so long as such power can be exercised in such a manner as will not in the opinion of the Authorised Person in any way prejudice the concessions granted or available to or in respect of the Fund under the Act or cause the Fund to be in breach of the provisions of the Act

governing the appointment of Trustees under superannuation funds PROVIDED THAT nothing in this sub-clause shall prevent the Trustees –

- (i) in any case where it is impracticable to continue to operate the Fund as a closed fund from effecting a dissolution of the Fund; or
- (ii) in any case where the circumstances so warrant from reactivating the Fund.

All powers authorities and discretions vested in the Founder (other than those already vested in the Trustees as the result of the operation of this Clause) shall where there is no Founder be deemed to be vested in the Trustees until such time (if any) as the role of the Founder is re-assumed under the Deed.

- (3) IF at any time there are no Members and in the opinion of the Trustees all benefits which could become payable from the Fund to or in respect of any former Member or other person have been paid and all liabilities under the Fund in respect thereof fully discharged then the Trustees may with the consent of the Founder determine to terminate the Fund and in this event the Fund shall be dissolved and any moneys or other assets then remaining in the Fund after the payment of any expenses incurred by the Fund in the execution hereof shall be realised and the proceeds distributed to the Employers in such shares as the Founder shall determine.

MISCELLANEOUS PROVISIONS

Recognised Schemes

- 1.17 (1) IF during the continuance of the Fund any Recognised Scheme is established or introduced for the purposes of providing superannuation, retiring allowances, pensions or any other benefit substantially the same as or similar to a benefit provided by the Fund for (inter alia) Members of the

Fund and/or their Dependants and if any of the Employers be compelled to pay either directly or indirectly any portion of the contributions premiums or other costs of such introduction an Employer if it so desires may not more than 12 months after the date of such introduction give written notice to the Trustees of its intention from the date of the establishment or introduction of that Recognised Scheme to reduce its contributions to the Fund for all or any of such Members and/or their Dependants to an extent not exceeding the extent of the contributions, premiums or costs which the Employer is compelled to pay to the Recognised Scheme.

- (2) In the event that an Employer decides to reduce its contributions to the Fund pursuant to sub-clause (1) of this Clause, any Member obliged to contribute to such Recognised Scheme shall likewise be relieved of his/her obligation or liability (if any) to contribute to the Fund to the extent determined by the Trustees not exceeding the extent of the contributions he is compelled or required to pay to the Recognised Scheme. Any such determination and the extent of the relief granted shall be communicated in writing by the Trustees to the Members and the Employer.

Forfeiture of Entitlements

- 1.18 NO benefit payable out of the Fund shall be assignable at law or in equity either in whole or in part and if any person shall do or cause or suffer to be done any act or thing or if some event shall happen whereby all or any part of the benefit to which a person may be entitled if payable or accruing to him/her absolutely would whether by his/her own act or by operation of the law or otherwise become payable to or vested in any other person or persons or Government or other public authority or if a person entitled to a benefit shall in the opinion of the Trustees become of unsound mind or incapable of managing his/her own affairs or if a Member becomes bankrupt or assigns or charges or purports to assign or charge his/her benefit in the Fund then such benefit shall be forfeited and in the case of a forfeited benefit the Trustees shall pay out of the Fund to such person or persons and in such manner as they think fit for the benefit of the person in respect of whom the benefit has been forfeited as aforesaid or his/her dependants or any of them at any time and from time to time any sum or sums not exceeding altogether

the amount which would have been payable to or in respect of him/her if his/her benefits had not been forfeited to the Fund **PROVIDED THAT** no benefit shall be payable under the provisions of this Clause to or in respect of a Member while he remains in Remunerated Employment other than for the support and maintenance of that Member and/or his/her Dependants for the purpose of relieving hardship.

Defalcation

- 1.19** IF a Member is party or privy to any defalcation in respect of the funds of the Fund then the benefit to which the Member would otherwise have been entitled under the Fund shall be applied so far as it shall extend to make good any defalcation and to meet any costs or losses (including the costs of any prosecution or civil proceedings) incurred by the Fund as a result of or incidental to or arising howsoever out of the defalcation and the amount so applied shall be retained in the Fund for the general purposes thereof and the balance of the said benefit which is not so applied shall be dealt with in accordance with the other provisions of the Deed **PROVIDED THAT** no amount shall be liable to be applied as aforesaid if the Member satisfies the Trustees that the amount which has been the subject of such defalcation cost or loss as aforesaid has been recovered by other means.

Powers of Employer not Affected

- 1.20** **NOTHING** in the Deed shall be deemed to affect prejudice or alter in any way the powers of an Employer with regard to the dismissal or remuneration of or any dealings whatsoever with any of its Employees and nothing herein contained shall be construed as rendering the Employer liable or responsible for anything whatsoever in respect of these presents which may be done or omitted by the Employer or any of its Employees or any other person. Any benefits to which any Member or other person may be or may claim to be entitled under the Deed shall not be used or alleged or claimed as damages or as grounds for increasing damages in any action or claim by him/her or by anyone claiming through or under him/her against the Employer in respect of any such dismissal or dealing.

Appointment of Receiver

1.21 IF at any time a receiver or a receiver and manager of the property of an Employer is appointed or if an Employer is placed under the official management of a person or a committee of management (such receiver or receiver and manager or person or committee appointed as official manager being hereinafter in this Clause called the "Receiver") then notwithstanding anything expressed or implied to the contrary in the Deed or in the instrument pursuant to which such receiver or receiver and manager has been appointed all the authorities powers and discretions by the Deed vested in or exercisable by that Employer (including those exercisable in the capacity of sole Trustee of the Fund, where an Employer is the sole Trustee) shall not be deemed to be vested in or exercisable by the Receiver and references in the Deed to that Employer shall not be deemed to be references to the Receiver.

Availability of Deed

1.22 A copy of the Deed and of all amendments and additions thereto shall be kept at the principal office of the Trustee and shall be available for inspection by any Member during normal business hours.

Replacement of Founder

- 1.23** (i) **THE** person holding the office of Founder may at any time nominate another person to become Founder and, by the execution of an appropriate written instrument, such nominee may become Founder;
- (ii) Without limiting the sub-Clause (i) hereof, if at any time there is no Founder or the Founder ceases to be willing to act as Founder or, being a natural person, is in the opinion of the Trustees (whose determination shall be final) incapacitated to such an extent as to render him/her unable to properly discharge the functions of the Founder, the Members may by simple majority appoint a person to be the Founder.

AMENDMENT

Amendments

- 1.24 (1) **THE** Founder may at any time by deed or other written instrument made between the Founder and the Trustees alter add to or delete from the provisions of the Deed (including this Clause) and any such alterations additions and deletions shall be effective from the date on which the deed or other written instrument is executed as aforesaid or from such earlier or later date as is specified for that purpose in such deed or other written instrument **PROVIDED THAT** no such alterations additions and deletions shall subject to sub-clause (2) of this Clause be made unless -
- (a) an Actuary certifies that in his/her opinion such alterations additions and deletions will not substantially prejudice the value of the benefits secured for or in respect of any Member by the contributions paid to the Fund prior to the date on which the deed or other written instrument is executed as aforesaid; or
 - (b) all of the Members on the date the deed or other written instrument is executed as aforesaid give their consent in writing thereto and the alterations additions and deletions do not without the written consent of the Member or the person entitled thereto reduce the amount or value of any benefit payable from the Fund to or in respect of a Member who died or otherwise ceased to be a Member prior to the date on which the deed or other written instrument is executed as aforesaid.
- (2) Notwithstanding the provisions of sub-clause (1) of this Clause, the Founder may at any time by deed or other written instrument made between the Founder and the Trustees alter add to or delete from the provisions of the Deed (including this Clause) in order to-

- (a) secure or better secure exemption relief or concessions from or in respect of taxation or any other governmental imposition for or in relation to the Fund, the income of the Fund, any benefit which is or may become payable from the Fund or the payment of such a benefit; and/or

- (b) enable or better enable the Fund or the Deed to comply with any present or future law, requirement or practice of or within the Commonwealth of Australia or any State or Territory thereof in relation to superannuation or like funds or benefits or otherwise;

and any such alterations, additions and deletions shall be deemed not to substantially prejudice the value of the benefits secured for or in respect of any Member by the contributions paid to the Fund prior to the date on which the deed or other written instrument is executed as aforesaid.

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PART 2

PROVISIONS RELATING TO MEMBERSHIP, CONTRIBUTIONS AND BENEFITS

MEMBERSHIP

Admission of Members

- 2.1 (1) **ONLY** Eligible Persons shall be eligible to apply to become a Member of the Fund and to make application pursuant to Sub-clause (2) of this Clause. The Founder (if a natural person who is also an Eligible Person) may be a Member.
- (2) An Eligible Person may make written application in such form as the Trustees may from time to time require to become a Member of the Fund from the date on which the Eligible Person first becomes eligible as aforesaid or from such other date as is approved by the Trustees and upon acceptance of the said application shall become a Member from that date.
- (3) The Trustees may admit to the Fund subject to such special conditions as the Trustees consider appropriate any Eligible Person who has applied to become a Member and who is unable to submit evidence of health of such standard or to pass such medical tests as the Trustees may prescribe or to submit proof to the satisfaction of the Trustees of any statement in his/her application for admission and if after an application by an Eligible Person to become a Member has been accepted any statement made or evidence submitted to the Trustees pursuant to this sub-clause in respect of that application is found to contain any misstatement error mistake or suppression the Trustees may make such adjustments as the Trustees in their absolute discretion consider appropriate to the benefits to be provided by the Fund for that Member and/or the contributions (if any) to be paid to the Fund by that Member.

- (4) For the purposes of effecting increasing or otherwise varying any policy of insurance or assurance as provided in paragraph (j) of sub-clause (3) of Clause 1.12 the Trustees may from time to time 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 such other steps as may be required for the aforesaid purposes. If any Member or any person who has applied to become a Member refuses to undergo such medical examination or to undertake any other step which may reasonably be required for the aforesaid purposes or if he does or omits to do anything that would or might vitiate the policy or result in the policy moneys or any part thereof not becoming payable the Trustees may adjust the benefits to be provided by the Fund for or in respect of that Member or person in such manner as the Trustees consider appropriate.
- (5) Every person being or becoming a Member shall ipso facto be deemed to have approved of and to be bound by the Deed.
- (6) The Trustees shall ensure that each person who becomes a Member is notified in writing at or prior to his/her date of acceptance of his/her right and the right of his/her Dependants and legal personal representatives to receive benefits from the Fund and of such further information and matters and in such form and at such times as may be necessary to satisfy any relevant requirement of the Act.
- (7) The Trustees may at any time and from time to time for the purposes of the Fund classify Members into different categories of membership. The number and designation of categories of Members shall be as determined from time to time by the Trustees. The Trustees shall advise a Member of any category of membership in which he is classified for the time being and of any subsequent change in that category but failure to give any such advice or delay therein shall not render that classification or reclassification void, voidable or unenforceable.

RECEIPTS

Receipts

- 2.2 (1) EACH Member shall contribute to the Fund such amounts or at such rates as the Member elects and the Employer (if any) approves from time to time.
- (2) No contributions shall be payable by a Member after the date on which a benefit becomes payable from the Fund to or in respect of him/her or during any period when he is not in Remunerative Employment unless such contributions are provided for in the Act.
- (3) Subject to such terms and conditions as it determines, the Trustee may in its absolute discretion and for such period as it thinks fit reduce or waive the contribution which would otherwise be payable by a Member pursuant to the Deed and may likewise determine that any contributions which would have been paid by a Member but for the exercise of a discretion as provided in this sub-clause shall be deemed to have been paid by that Member for the purpose of calculating the amount of or determining the eligibility for payment of any benefit payable pursuant to the Deed the amount of or eligibility for which depends on the amount of contributions paid by that Member or the period during which he has contributed.
- (4) In addition to any contributions which a Member may make pursuant to sub-clause (1) of this Clause each Employer may contribute to the Fund:
- (i) such amounts or at such rates as the Employer elects;
 - (ii) such other amounts or rates as the Employer is required to make pursuant to any Approved Superannuation Agreement.

The contributions payable by an Employer pursuant to this sub-clause shall be paid to or for the benefit of the Fund in the manner and at the direction and times determined by the Trustees.

- (5) **NOTWITHSTANDING** anything expressed or implied to the contrary in the Deed, the Trustees cannot accept all or part of the contributions payable by a Member or an Employer if the acceptance thereof is not provided for by the Act or would adversely affect the granting or continuance of concessions for or in respect of the Fund under the Act or cause the Fund to be in breach of what the Trustees believe to be a relevant requirement of the Act regarding the payment of contributions to superannuation funds or cause the Fund or the Trustees to be liable for a penalty or obligation for which it would not otherwise be liable. The Trustees may adjust all or any of the benefits payable or to be provided from the Fund for or in respect of any person whom the Trustees consider to be affected by such refusal in such manner and to such extent as the Trustees consider appropriate and equitable and the adjusted benefits shall be substituted for the benefits otherwise provided for under the Deed and the Deed shall apply mutatis mutandis to such adjusted benefits.
- (6) A Member shall be deemed to have expressly authorised the Employer to deduct (and an Employer may without further authority than this Clause deduct) the contributions payable by him/her from his/her remuneration from that Employer whenever that remuneration is paid. Any amount so deducted by an Employer shall be held by that Employer upon trust for the Fund to be paid to the Fund in the manner and at the direction and times determined by the Trustees.
- (7) The provisions of this Clause 2.2 and of Clause 2.3 apply only to each Member who is engaged in Remunerative Employment and a reference to "Member" in these Clauses is a reference to such Members only.

Termination Reduction or Suspension of Contributions

- 2.3 (1) **NOTWITHSTANDING** anything expressed or implied to the contrary in the Deed a Member or an Employer may at any time terminate contributions to the Fund by notifying the Trustees in writing of its decision and the liability of the Member to contribute shall from the date which is the later of the date specified in such notification and the date on which such notification is received by the Trustees cease and determine except in respect of contributions due prior to the aforesaid date.
- (2) Notwithstanding anything expressed or implied to the contrary in the Deed a Member or an Employer may at any time reduce or suspend all or any part of contributions to the Fund by notifying the Trustees in writing of its decision and the liability of the Member to contribute shall from the date which is the later of the date specified in such notification and the date on which such notification is received by the Trustees cease to the extent or for the period specified in that notification except in respect of contributions due prior to the aforesaid date.
- (3) After receipt by the Trustees of a notification from a Member or an Employer that he has decided to terminate his/her contributions as provided in sub-clause (1) of this Clause or to reduce or suspend all or any part of his/her contributions as provided in sub-clause (2) of this Clause no benefit shall unless otherwise agreed by the Trustees be paid from the Fund to or in respect of any such member (including the benefit payable in respect of an event which occurred prior to the receipt by the Trustees of the notification) until the Trustees have determined the adjustments (if any) to the benefits of the Members affected which they deem appropriate and those adjusted benefits shall be substituted for the benefits otherwise provided for in the Deed and the provisions of the Deed shall apply mutatis mutandis to those adjusted benefits. The Trustees shall as soon as practicable notify the Members affected of any adjustments to their benefits pursuant to the provisions of this sub-clause.

- (4) If all Members and Employers notify the Trustees as provided in sub-clause (1) of this Clause that they have decided to terminate their contributions then after the receipt of such notification and notwithstanding anything expressed or implied to the contrary in the Deed no further members shall be admitted to membership of the Fund.

Other Members Receipts

- 2.4 (1) **THE** provisions of this Clause 2.4 apply to each Member who is a Transferred Retiree Member.
- (2) The Trustees may accept at or after the Member's retirement from Remunerative Employment an amount in respect of the Member the payment of which qualifies the Member to be a transferred retiree member under the provisions of the Act.
- (3) **NOTWITHSTANDING** anything expressed or implied to the contrary in the Deed, the Trustees cannot accept the amount referred to in Clause 2.4(2) hereof if the acceptance thereof is not provided for by the Act or would adversely affect the granting or continuance of concessions for or in respect of the Fund under the Act or cause the Fund to be in breach of what the Trustees believe to be a relevant requirement of the Act regarding the payment of contributions or payments to superannuation funds or cause the Fund or the Trustees to be liable for a penalty or obligation for which it would not otherwise be liable. The Trustees may adjust all or any of the benefits payable or to be provided from the Fund for or in respect of any person whom the Trustees consider to be affected by such refusal in such manner and to such extent as the Trustees consider appropriate and equitable and the adjusted benefits shall be substituted for the benefits otherwise provided for under the Deed and the Deed shall apply mutatis mutandis to such adjusted benefits.

BENEFIT ACCOUNTS

Members' Accounts

- 2.5 (1) (a) **WHEN** any Member is accepted as and becomes a Member pursuant to the provisions of the Deed the Trustees shall establish an Account in the name of that Member and the Trustees shall in the manner provided in this Clause maintain a record of the amount of benefits standing to the credit of each Member's Account from time to time for the purpose of determining the portion of the assets of the Fund which is available to provide the benefits to which the Member may become entitled under the Deed.
- (b) **THE** Trustees shall record in each Member's Account the amount of benefits therein which have vested and/or which have been preserved and shall ensure that the amount of benefits required by the Act or by an Approved Superannuation Agreement to be so vested or preserved for each Member is clearly identified as such in such Member's Account in order not to adversely affect the granting or continuance of any relevant concessions for or in respect of the Fund under the Act or cause the Trustees to be in breach of what they consider to be a relevant requirement of the Act or cause the Fund or the Trustees to be liable for a penalty or obligation for which it would not otherwise be liable and shall also ensure the sum of such required vested and/or preserved benefits is clearly identified as such in the Accounts of the Fund.
- (c) Except where specified to the contrary in sub-clause (5) of this Clause nothing in this Clause shall entitle any Member to any specific assets of the Fund and the Trustees shall have absolute discretion in determining which of such assets shall be applied to provide funds for any amount which becomes payable from a Member's Account pursuant to the Deed.

- (2) The amount of any contributions paid to the Fund by or in respect of a Member pursuant to Clause 2.2 hereof (excluding any contributions applied to pay premiums on a policy or policies effected on the Member's life pursuant to paragraph (i) of sub-clause (3) of Clause 1.12 of the Deed) shall be added to the amount standing to the credit of that Member's Account.
- (3) The amount accepted in respect of a Member pursuant to Clause 2.4 hereof shall comprise or be added to the amount standing to the credit of that Member's Account.
- (4) At each Balance Date and at any other date at which the Trustee consider it appropriate and desirable the Trustees shall to such extent as the Trustees consider necessary make a valuation of all the assets of the Fund as at that date and shall determine the share of the investment income since the previous such valuation which it is equitable to allocate to or when investment income is negative to be borne by the Account of each Member and the Reserve Account and such investment income shall be allocated to or borne by the Account of each Member and the Reserve Account accordingly. For the purposes of this sub-clause investment income shall include interest and income received (including dividend and rental income), profits and losses on the realisation of assets and appreciation and depreciation in the value of the assets according to the valuation made by the Trustees as aforesaid.
- (5) In respect of any expenses paid out of the Fund pursuant to Clause 1.10 and not paid from the Reserve Account pursuant to Clause 2.14 the Trustees shall determine the share which it is equitable to be borne by each Member's Account and shall deduct the amount which it is determined should be borne by a Member's Account from the amount standing to the credit of that Account.
- (6) Without prejudice to Clause 1.12 of the Deed, at the request of or with the approval of a Member -

- (a) the Trustees may apply all or any part of the amounts credited to the Account of that Member in acquiring or entering into particular investments nominated by the Member and, in such event –
 - (i) the investments attributable to the Member shall be separately identified in the Fund in respect of the Member and shall be deemed to comprise a separate "Sub-Fund" attributable solely to the Member; and
 - (ii) the Member's Sub-Fund shall be applied in determining the amount standing to the credit of his/her Account and in providing funds for any amount which becomes payable or is to be deducted from that Account pursuant to the Deed, but shall not be applied in relation to the Account of any other Member or the Reserve Account, or towards any amount payable from any other Member's Account purpose part of the investment income of the Fund which in the opinion of the Trustees is attributable to a Member's Sub-Fund shall be allocated to or borne by that Member's Account only; and
- (b) the Trustees may vary the investments comprising the Member's Sub-Fund in the manner nominated by the Member or within the terms of the Member's nomination;

PROVIDED THAT the Trustees shall not be bound to act upon the request of a Member and having so acted at the request of or with the approval of a Member, the Trustees may in any event unilaterally vary the investments comprising the Member's Sub-Fund (or disband all or part of that Sub-Fund) as they see fit if in the sole judgement of the Trustees it is appropriate to do so in order to secure or better secure concessions or benefits in respect of the Fund under the Act or if the Trustees consider it appropriate to do so in the interests of the more efficient and economical operation of the Fund.

BENEFITS

Retirement Benefits

- 2.6 **UPON** the retirement of a Member from Remunerative Employment on or after his/her Normal Retirement Date or at a date approved by the Founder before his/her Normal Retirement Date or upon the Trustees accepting an amount in respect of a Member in accordance with Clause 2.4 hereof there shall be paid to the Member from the Fund subject to the provisions of Clause 2.17 the benefit advised to him/her by the Trustees at the date on which he joined the Fund as the same may have been amended from time to time and advised by the Trustees to the Member **PROVIDED THAT** in the case of a Member who is not a Transferred Retiree Member the said benefit shall not in any event be less than the amount which would have been payable to the Member had he ceased to be in Remunerative Employment in circumstances in which he would have been entitled to receive the payment of a benefit under Clause 2.12.

Payment of Pension Benefits

- 2.7 **SUBJECT** always to the provisions of Clause 2.8, any benefit to which a Member is entitled from the Fund pursuant to Clause 2.6 which is a pension benefit shall be paid subject to the provisions of Clause 2.17 by equal monthly instalments or at such other intervals as the Trustees may in their absolute discretion determine and may continue until the death of the Member **PROVIDED THAT** the total of any benefit payable to the Member from the Fund pursuant to this Clause shall not in any event exceed the amount standing to the credit of his/her Members Account.

Commutation Variation of and Increases in Pensions

- 2.8 (1) **SUBJECT** to the provisions of Clause 2.17 and sub-clause (2) of this Clause, a Member or any other person who is for the time being entitled to receive the payments in respect of any pension benefit which is or has become payable from the Fund pursuant to the Deed may at any time elect-

- (a) to have the whole or any part of such pension benefit commuted to a lump sum benefit; and/or
- (b) to have the whole or any part of such pension benefit or of the balance of such pension benefit altered to a pension benefit of a different amount and payable on different terms to those set out in the Deed;

and the Trustees shall pay the amount of any such lump sum benefit and the amount of any such altered pension benefit in lieu of and in full satisfaction of the payments in respect of the part of the pension benefit so commuted or altered.

- (2) The amount of any lump sum benefit and/or the amount of any altered pension benefit payable pursuant to sub-clause (1) of this Clause shall be determined by the Trustees who shall comply as appropriate with the provisions of the Act in order to ensure concessions or benefits in respect of the Fund under the Act are secured and not adversely affected and in the interests of the more efficient and economical operation of the Fund.
- (3) The Trustees may from time to time increase any pension of a Pensioner or Eligible Spouse which is being paid from the Fund pursuant to the Deed by such amount as the Trustees shall determine from time to time and any such increases so granted shall be payable with the normal instalments of pension and shall cease when the normal instalments cease.

Benefits on Death in Service

- 2.9 (1) UPON the death of a Member while in Remunerative Employment there shall be payable from the Fund in the manner provided in sub-clause (2) of this Clause a lump sum benefit equal to the sum of:-**
- (a) the amount standing to the credit of his/her Members Account at the date of his/her death; and

- (b) the proceeds (if any) of any policy or policies of insurance effected on the life of the Member pursuant to paragraph (i) of sub-clause (3) of Clause of Clause 1.12 of the Deed.
- (2) Unless the conditions upon which a benefit is payable specify otherwise benefits payable upon the death of a Member while in Remunerative Employment shall be payable by the Trustees to or for the benefit of such one or more Dependants of the Member to the exclusion of the other or others of them in such shares and proportions as the Trustees shall in their absolute discretion decide **PROVIDED THAT** if after reasonable enquiry the Trustees determine that the deceased Member left no Dependants or that there are no Dependants of the deceased Member then surviving whose existence identity and whereabouts are sufficiently and satisfactorily known to the Trustees and the Trustees are unable to locate any legal personal representative of the Member or are of the opinion that no legal personal representative has been appointed and that it is unlikely that one will be appointed then at the expiration of such period of time as the Trustees shall determine the benefit or any part thereof which would otherwise have been payable to the Dependants or legal personal representatives of the Member pursuant to this sub-clause shall cease to be payable and shall be retained in the Fund for the general purposes thereof but notwithstanding anything expressed to the contrary in this sub-clause the Trustees shall have power in their discretion to pay the relevant benefit in whole or in part at a later date to the Dependants or legal personal representatives of the Member and **PROVIDED FURTHER THAT** where in consequence of the exercise of the Trustees' discretion any sum is payable to or for the benefit of or in respect of a minor the Trustees may pay the same to the person appearing to the Trustees to be the parent or guardian or the person having the actual custody or control of such minor or with whom such minor is residing on behalf of such minor and the receipt of such person for any moneys so paid shall be a good discharge to the Trustees therefore and the Trustees shall not be bound to see to the application thereof.

Eligible Spouse's Pension

- 2.10 (1) **SUBJECT** always to the provisions of sub-clause (2) of this Clause, upon the death of a Pensioner who is survived by an Eligible Spouse the Trustees may at their absolute discretion pay to that Eligible Spouse an annual pension benefit of an amount equal to such proportion of the annual pension being paid to the Pensioner immediately prior to the date of his/her death as the Founder in its absolute discretion shall determine.
- (2) Any pension payable to an Eligible Spouse pursuant to the foregoing provisions of this Clause shall be payable for the lifetime of the Eligible Spouse by equal monthly instalments or at such other intervals as the Trustees may in their absolute discretion determine.

Total and Permanent Disablement Benefit

- 2.11 **UPON** the retirement of a Member from Remunerative Employment before his/her Normal Retirement Date as a result of his/her Total and Permanent Disablement there shall be paid to or in respect of him/her from the Fund an amount determined in the manner set out in sub-clause (1) of Clause 2.9 as if he had died on the date on which he was last at work.

Pre-Retirement Benefits

- 2.12 **UPON** a Member ceasing to be in Remunerative Employment before his/her Normal Retirement Date otherwise than as provided in Clauses 2.6, 2.9 and 2.11 there shall be paid to him/her from the Fund subject to the provisions of Clause 2.17 a lump sum benefit equal to the contributions (if any) made by the Member to the Fund accumulated with interest compounded at the Determined Interest Rate up to the date on which he ceases to be in Remunerative Employment plus such additional amount (if any) as the Fund is required to provide for and in respect of the Member in order to ensure that the total benefit to which he is entitled is at least equal to the minimum laid down pursuant to the relevant requirements of the Act or under an Approved Superannuation Agreement. **PROVIDED THAT** the

Founder may direct the Trustees to increase the said benefit by such further amount as the Founder in its absolute discretion shall determine having regard to the circumstances of the Members' cessation of Remunerative Employment **PROVIDED FURTHER THAT** the total benefit payable to the Member from the Fund pursuant to this Clause shall not in any event exceed the amount then standing to the credit of his/her Account.

Payment of Benefits by Transfer of Investments

2.13 THE Trustees may with the agreement of the person to whom a benefit is payable pursuant to the Deed transfer any of the investments of the Fund of equivalent value to such person in lieu of paying all or any part of the amount of the benefit otherwise payable **PROVIDED THAT** the Trustees receive from a Responsible Authority an acknowledgement to the effect that such transfer will not cause the Fund to be in breach of any relevant requirement under the Act. For the purposes of this Clause the value placed on any investments to be so transferred shall (unless the Trustees otherwise determine) be the same as the value placed on those investments when the Trustees last valued the assets of the Fund for the purposes of the relevant provisions of Clause 2.5.

Application of Forfeited Benefits

2.14 THE Trustees shall establish and maintain as provided in this Clause and in Clause 2.5 an Account herein referred to as the "Reserve Account" and if any benefit which would otherwise be payable to or in respect of a Member is forfeited pursuant to the provisions of Clause 1.18 or Clause 2.9(2) and the amount of the forfeited benefit is not otherwise applied as provided therein the amount of the forfeited benefit shall be added to the amount standing to the credit of the Reserve Account and if after a benefit is paid to a Member pursuant to any provision of the Deed there remains an amount standing to the credit of his/her Account that amount shall be added to the amount standing to the credit of the Reserve Account and from time to time the Trustees shall as directed by the Founder apply any amount standing to the credit of the Reserve Account in any one or more of the following ways and shall reduce the amount standing to the credit of the Reserve Account accordingly:

- (a) in the payment of the whole or any part of any contributions payable to the Fund by an Employer;
- (b) in providing assistance to any Member in case of extreme hardship;
- (c) in providing assistance to the Dependants of any Member or former Member;
- (d) in augmenting the benefits payable to or in respect of any Member pursuant to the Deed;
- (e) in paying any expenses payable out of the Fund pursuant to Clause 1.10; or
- (f) in any other manner which will not in the opinion of the Trustees prejudice the granting or continuance of any concession available to or in respect of the Fund under the Act or cause the Fund to be in breach of what the Trustees believe to be a relevant requirement of the Act.

PROVIDED THAT notwithstanding any directions by the Founder or Employer to the contrary the Trustees must at all times comply with the relevant provisions of the Act from time to time in order to ensure the granting or continuance of any relevant concessions or benefits in respect of the fund under the act and to ensure neither the fund nor the Trustees become liable for any penalty or obligation for which it would not otherwise be liable.

Restrictions on Benefits

- 2.15 (1) NOTWITHSTANDING** anything expressed or implied to the contrary in the Deed –
- (a) no benefit or other amount shall be paid or provided from the Fund to or in respect of any person in any circumstances, of any amount or in any manner or form which in the opinion of the Trustees will

prejudice the granting or continuance of any concession for or in respect of the Fund under the Act or cause the Fund to be in breach of what the Trustees believe to be a relevant requirement of the Act or cause the Fund or the Trustees to be liable for any penalty or obligation for which it would not otherwise be liable; and

- (b) no amount shall be deducted from any benefit and no part of any benefit shall be forfeited for any reason where, in the opinion of the Trustees, to do so would prejudice the granting or continuance of such a concession or cause any such breach or cause the Fund or the Trustees to be liable for such penalty or obligation.

(2) In order to ensure compliance with sub-clause (1) of this Clause -

- (a) where a benefit must be preserved and/or vested the Trustees shall preserve and/or vest that benefit either within or (where applicable or if required with the consent of the Member) without the Fund, in such manner and form, by way of such arrangements and subject to such conditions as will ensure such compliance; and
- (b) in any case the Trustees may take such actions as they see fit in ensuring such compliance or preserving or vesting of a benefit as aforesaid, including without limitation adjusting the amount or terms of payment of benefits in such manner, to such extent and by way of such arrangements as they consider appropriate;

and any decision by the Trustees for the purposes of this Clause shall be final and binding on all interested persons.

- (3) If pursuant to sub-clauses (1) and (2) of this Clause the Trustees are compelled to reduce a benefit secured for or in respect of a Member by reason of the fact that in their opinion such benefit is excessive or likely to be excessive for the purposes of the Act the Trustees may in their absolute discretion either:-

- (a) prohibit limit restrict or refuse to accept all or any amounts or further contributions to the Fund by or in respect of such Member; or
 - (b) transfer to another fund more particularly referred to in sub-clause (4) hereof, an amount which in the opinion of the Trustees represents the aforesaid excess (hereinafter called the "Excess Benefits") and the Trustees shall in like manner deal with any policies of insurance or assurance effected in respect of the Member pursuant to paragraph (i) of sub-clause (3) of Clause 1.12.
- (4) For the purposes of paragraph (b) of sub-clause (3) hereof the Trustees may establish a separate and distinct fund to be known as the Excess Benefits Fund (not being a fund the income of which is wholly or partly exempt from income tax) and the Trustees may declare that it will hold such Excess Benefits to be subject to such trusts powers authorities and provisions as the Trustees in their absolute discretion shall determine **PROVIDED THAT** the portion of the contributions which would otherwise have been payable to the Fund by or in respect of the Member concerned but for the foregoing provisions of this Clause may thereafter be paid to the Excess Benefits Fund.
- (5) In the event that the Trustees subsequently determine that the benefits secured or payable in respect of a person under the Fund entitled to Excess Benefits under the Excess Benefits Fund are no longer excessive or likely to be excessive for the purposes of the Act and that all or part of the Excess Benefits of that person could be transferred back to the Fund without prejudice to the granting or continuance of the concessions available to or in respect of the Fund under the Act the Trustees may in such circumstances transfer all or part of such Excess Benefits back to the Fund and shall in like manner deal with any policies of insurance or assurance effected in respect of the Member pursuant to paragraph (i) of sub-clause (3) of Clause 1.12.

Transfer of Service from One Employer to Another

- 2.16 IF a Member of the Fund transfers from the service of one Employer to the service of another Employer participating in the Fund then (unless the Founder and the Trustees expressly agree otherwise) that transfer of service should not be deemed to be cessation of service for the purposes of any entitlement to any benefit from the Fund.

Conditions for Payment of Preserved Benefits

- 2.17 ANY benefit which becomes payable under the Fund all or any part of which cannot be paid immediately and to do so would result in the Fund being in breach of what the Trustees believe to be a relevant requirement of the Act or would result in the Fund or the Trustees being liable for a penalty or obligation for which it would not otherwise be liable then unless the Trustees otherwise determine (and notwithstanding the provisions of Clause 2.19 but subject to the provisions of sub-clause (4) of that Clause) the Member may direct the Trustees to transfer that benefit or an amount equivalent in value thereto (hereinafter called the "Preserved Benefit") to another superannuation fund or benefit arrangement (which for the purpose of this Clause shall be deemed to include an Approved Deposit Fund) selected by him/her and in which the Member is a participant or eligible to participate **PROVIDED THAT** if the Trustees do not receive such a direction and have not determined otherwise as aforesaid and the Trustees are satisfied that there exists a superannuation fund or benefit arrangement in which the Member is a participant or eligible to participate and the trustees thereof are empowered and willing to accept a transfer of the Member's Preserved Benefit then the Trustees may transfer that Preserved Benefit to that other superannuation fund or benefit arrangement without the Member's direction or consent and that Member shall be deemed to have irrevocably appointed each of the Trustees his/her attorney for the purpose of arranging and securing his/her participation in that superannuation fund or benefit arrangement to which the transfer is to be effected hereunder and the Trustees may act unilaterally in the name of the Member for that purpose **PROVIDED FURTHER THAT** if such a transfer shall not be made as hereinbefore provided then the Preserved Benefit shall be retained by the Trustees upon trust for that Member and accumulated with interest at the Determined

Interest Rate up to the Date of Payment where "Date of Payment" means whichever is the first to occur of the following:-

- (a) the death of the Member;
- (b) the date on which the Member satisfies the Trustees that he has retired from Gainful Employment as the result of his/her Total and Permanent Disablement;
- (c) the attainment by the Member of an age not less than 55 years and production of evidence satisfactory to the Trustees that he has ceased Remunerative Employment;
- (d) the Trustees being satisfied that the Member is about to leave Australia permanently; or
- (e) subject to the receipt of an appropriate request for payment by or in respect of the Member, the occurrence of another event or the existence of other circumstances upon which in the opinion of the Trustees a benefit may be paid under the Deed to or in respect of a Member without prejudice to the concessions granted or available to or in respect of the Fund under the Act and without causing the Fund to be in breach of what the Trustees believe to be a relevant requirement of the Act.

TRANSFERS FROM AND TO THE FUND

Transfers from Other Funds

2.18 SUBJECT to such terms and conditions as the Trustees think fit (including without limitation such conditions as are necessary to secure or protect concessions granted or available to or in respect of the Fund under the Act or in order to comply with what the Trustees believe to be a relevant requirement of the Act) the Trustees may make or carry into effect an arrangement with the Trustees of another superannuation fund or benefit arrangement (which for the purposes of

this Clause shall be deemed to include an Approved Deposit Fund) and/or any person who is a member or former member of such other superannuation fund or benefit arrangement whereby an agreed sum or agreed assets shall be paid into or transferred to the Fund and such person shall if he is not already a Member and notwithstanding the other provisions of the Deed be admitted as a Member and shall be granted such rights to benefits additional to or in lieu of those otherwise provided under the Deed as the Founder shall determine and shall unless otherwise determined by the Founder be required to contribute to the Fund as provided in the Deed.

Transfers to Other Funds

- 2.19 (1) SUBJECT** to sub-clause (4) of this Clause, the Trustees may with the written consent of a Member and subject to such conditions as the Trustees decide transfer to any other superannuation fund or benefit arrangement (which for the purpose of this sub-clause shall be deemed to include an Approved Deposit Fund) in which the Member is a participant or eligible to participate any benefit which becomes payable to or in respect of a Member under the Fund due to the retirement of that Member from Remunerative Employment pursuant to the Deed and the receipt of such other superannuation fund or benefit arrangement shall be sufficient discharge to the Trustees and neither the Trustees nor any Employer shall be in any way responsible for the payment or disposal by the trustees of the other superannuation fund or benefit arrangement of the benefit so paid or transferred.
- (2) Subject to sub-clause (4) of this Clause, if a Member is accepted as a member of another superannuation fund or benefit arrangement –
- (a) operated for the benefit of any Employees by an Employer; or
 - (b) not operated by an Employer but to which the Employer is required to contribute or has agreed to pay contributions on his/her behalf;

then the Employer may notwithstanding the provisions of Clause 2.3 hereof forthwith terminate or reduce its contributions to the Fund in respect of that Member and may require the Member to terminate or reduce his/her contributions (if any) to the Fund and in the event of any termination or reduction of contributions as aforesaid the Trustees shall make such adjustments to the benefits of the Member as the Trustees consider appropriate in the circumstances and those adjusted benefits shall be substituted for the benefits otherwise provided under the Deed and the provisions of the Deed shall apply mutatis mutandis to those adjusted benefits **PROVIDED THAT** in the event of termination as aforesaid of both the Employer's and the Member's contributions (if any) the Trustees shall if directed by the Employer (and in lieu of adjusting the Member's benefits as aforesaid) pay or transfer to the Trustees of the said other superannuation fund or benefit arrangement such amount as in the opinion of the Trustees represents the interest of the Member in the Fund to be applied by the Trustees of the said other superannuation fund or benefit arrangement for the benefit of that Member.

- (3) Subject of sub-clause (4) of this Clause, if an Employer enters into an arrangement to sell or otherwise transfer any part of its operations to an employer which is not participating in the Fund (hereinafter called the "new employer") and pursuant to this arrangement any Member ceases to be in the service of the Employer and enters the service of the new employer the Trustees may with the written consent of such Member and subject to such conditions as the Trustees may decide and in lieu of paying or providing the benefit which would otherwise be payable under the Deed pay or transfer to any superannuation fund or benefit arrangement in which the Member is a participant or eligible to participate and –
 - (a) established and operated by the new employer for the benefit of its employees; or
 - (b) not established or operated by the new employer but to which the new employer is required or has agreed to pay or is paying contributions on behalf of any of its employees;

such an amount as in the opinion of the Trustees represents the interest of the Member in the Fund to be applied by the Trustees of the said other superannuation fund or benefit arrangement for the benefit of that Member.

- (4) No benefit shall be transferred to another superannuation fund or benefit arrangement pursuant to the provisions of sub-clause (1), (2) or (3) of this Clause, if to do so would prejudice the continuance or availability of any concession granted or available to the Fund under the Act or cause the Fund to be in breach of what the Trustees believe to be a relevant requirement of the Act.

MISCELLANEOUS

Deductions from Benefits

- 2.20 (1) **NOTWITHSTANDING** anything expressed or implied to the contrary but subject always to the provisions of Clause 2.15, the Trustees may deduct from any benefit which but for this Clause would be or could become payable to or in the respect of a Member or from that Member's interest in the Fund (as the case may require) and may retain in the Fund any amount which the Trustees determine is owing to the Trustees or the Fund by that Member either solely or in conjunction with any other person on any account whatsoever (including interest at a rate which the Trustees consider appropriate).
- (2) In giving effect to and taking account of this Clause, the Trustees may adjust the rights and interests of such a Member (and of any person otherwise entitled to claim under or in respect of the Member) in such manner and to such extent as the Trustees consider appropriate and equitable.

Taxation

2.21 IF any tax or other government imposition shall be payable or liable to be withheld in respect of any benefit due to any person from the Fund or with regard to any contributions or payments due to be made by any person to the Fund then the Trustees (if compelled by law or requested by that person so to do) shall deduct or withhold or arrange to have deducted or withheld the amount of any such tax or other imposition (including any interest payable thereon) and shall account for the same to the proper authorities and may if necessary postpone payment of such benefit or refrain from receiving such contribution or payment until such tax or other imposition and any interest thereon has been paid withheld or provided for to the satisfaction of the Trustees.

Postponement of Benefit Payments

2.22 **NOTWITHSTANDING** anything expressed or implied to the contrary in the Deed but subject always to the provisions of Clause 2.15 and provided any concessions or benefits in respect of the Fund under the Act are not adversely affected and neither the Fund nor the Trustee is caused to be made liable for any penalty or obligation for which it would not otherwise be liable, the Trustees -

- (a) may for the purpose of facilitating the administration of the Fund postpone the commencement of the payment of any benefit under the Fund for any period not exceeding six months after the happening of the event upon which the benefit becomes payable and may either make such payment themselves or cause or arrange for the same to be made for and on their behalf; or
- (b) may at the request in writing of any person entitled to receive the payment of a lump sum benefit from the Fund withhold payment of that benefit for such period of time subject to the Act as shall be agreed between the Trustees and the person so entitled as aforesaid;

PROVIDED THAT the Trustees may add interest at such rate or rates and at such intervals as the Trustees in their absolute discretion shall determine to any benefit the payment of which is postponed or withheld pursuant to paragraph (a) or (b) of this Clause **PROVIDED FURTHER THAT** in any case where the Trustees decide to add interest the Trustees shall not be obliged to add interest to any such benefit the payment of which is postponed or withheld as aforesaid for a period of less than 30 days after the date on which it first became due for payment.

Proofs

- 2.23 (1) ANY person appearing purporting or claiming to be qualified or entitled to any benefit from the Fund shall on request produce to the Trustees such evidence do such acts and execute such documents as the Trustees may reasonably require.
- (2) Whenever it shall be necessary for the Trustees to decide questions of fact they may act upon such proofs and presumptions as they may deem satisfactory whether the same be strictly legal proofs or legal presumptions or not.

No Personal Claim

- 2.24 NO Member or person claiming through or under a Member or on behalf of a Member or as a Dependant of a Member shall be entitled to require any payment from the Fund except as may be expressly provided in the Deed.

Temporary Cessation of Service and Leave Without Pay

- 2.25 (1) IF any Member ceases to be in the service of an Employer in circumstances in which it is reasonable to expect that cessation will only be of a temporary nature and that he will rejoin the service of an Employer the Trustees may allow the Member to continue his/her membership of the Fund subject to such conditions as may be agreed upon by the Trustees, the Member and the Employer.

- (2) If any Member is granted leave without pay by an Employer the Member shall continue his/her membership of the Fund on such conditions as are determined by the Employer and approved by the Trustees.

Adjustments Relating to Insurance

2.26 NOTWITHSTANDING anything expressed or implied to the contrary in the Deed -

- (a) If the Trustees effect or seek to effect insurance from or with an Insurer in respect of any benefit which might become payable from the Fund in respect of a Member or group of Members and -
 - (i) that Insurer refuses to provide or increase insurance in respect of a Member on terms and conditions acceptable to the Trustees; or
 - (ii) that Insurer for any reason whatever fails to provide increase or maintain or reduces terminates or withholds insurance or does not admit or defers the whole or part of a claim the benefit or benefits in respect of which insurance was sought or effected may be adjusted in the manner and to the extent determined by the Trustees to be necessary to take account of the extent to which insurance is not obtained increased or maintained or is reduced terminated or withheld or such a claim is deferred or not admitted and such adjusted benefit or benefits shall be in lieu of and in full satisfaction of the benefit or benefits which would or might have been or become payable but for the operation of this sub-clause;
- (b) If any event provided for in paragraph (a) hereof occurs in relation to insurance sought or effected, the Trustees are not bound to seek alternative insurance with the same or another Insurer or, if they do decide to seek alternative insurance, they may limit that search to such Insurer or Insurers as they see fit; and

- (c) In any case, the Trustees may adjust the amount, time for and basis of payment of all or part of the benefit in respect of which insurance has been effected in such manner as they consider appropriate to take account of the terms and conditions upon which the proceeds of such insurance are payable by the relevant Insurer and the amount thereof.

Inclusion of Requirements

- 2.27 (1) **SUBJECT** to Clause 2.27(3) hereof the Trustee shall at all times comply with the requirements of the Act and the provisions thereof shall prevail over this Deed to the extent of any inconsistency with this Deed or in the event of any conflict with any other provisions of this Deed.
- (2) **NOTWITHSTANDING** anything expressed or implied to the contrary in the Deed the Trustees are empowered to accept contributions to the fund, to pay or provide from the fund any benefit or other amount, to deal with the benefits or other amounts, to keep and record in Members' Accounts, and to vest and/or preserve benefits in such manner as the Act may from time to time require and in order that any concessions or benefits in respect of the Fund under the Act are secured and not adversely affected and to ensure neither the Fund nor the Trustee becomes liable for any penalty or obligation for which it would not otherwise be liable and in the interests of the more efficient and economical operation of the Fund.
- (3) **NOTWITHSTANDING** anything in the Deed the requirements contained in the relevant standards prescribed in the Act as from time to time in force and as from time to time amended are deemed to be included herein unless and to the extent that the Trustees declare in writing that it shall not be taken to be so included and provided that in order for any such declaration to be valid it must also receive written ratification from not less than seventy-five per centum (75%) of the Members of the Fund as at the date of such declaration.

APPENDIX

THE FIRST SCHEDULE

NAME OF FUND: INNOVATIVE FUND MANAGEMENT
PTY. LTD. SUPERANNUATION FUND

COMMENCING DATE: 12/04/94

DATE OF EXECUTION: 21/4/94

FOUNDER: INNOVATIVE FUND MANAGEMENT
PTY. LTD.
A.C.N. 81 965 729

NORMAL RETIREMENT AGE: Males Age 65, Females Age 65

TRUSTEE(S): INNOVATIVE FUND MANAGEMENT
PTY. LTD.
A.C.N. 81 965 729

BALANCE DATE: 30th June each year

NOTE:

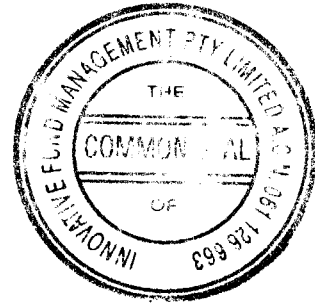
The Fund Reference Number is: 96082910531

The drafting of this document as at May 1993 has been undertaken and finalized by
Kenny & McAlister, Solicitors, 14 Kinane Street, Brighton, 3186.

IN WITNESS WHEREOF these presents were duly executed the Twenty first
day of April 1994.

FOUNDER

THE COMMON SEAL of)
INNOVATIVE FUND MANAGEMENT)
PTY. LTD.)
was hereunto affixed in the)
presence of:)

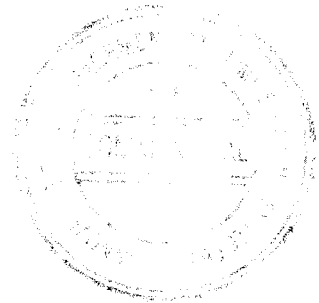


M. Ramu Director

Kalpana Ramu Director

CORPORATE TRUSTEE

THE COMMON SEAL of)
INNOVATIVE FUND MANAGEMENT)
PTY. LTD.)
was hereunto affixed in the)
presence of:)



M. Ramu Director

Kalpana Ramu Director