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# DEED OF VARIATION

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## ESTHER RUBERL SUPERANNUATION FUND

**FAINEANT PTY LTD**  
ACN 071 162 546  
("Trustee")

**ESTHER MERCEDES RUBERL and IAN ALEXANDER MOFFATT**  
("Members")

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# ESTHER RUBERL SUPERANNUATION FUND

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**PARTIES**

**FAINEANT PTY LTD** (ACN 071 162 546) of 3 Wagenah Avenue, Victor Harbor SA 5211 (“**Trustee**”)

and

**ESTHER MERCEDES RUBERL** and **IAN ALEXANDER MOFFATT** both of 3 Wagenah Avenue, Victor Harbor SA 5211 (“**Members**”)

**BACKGROUND**

- A. By a certain Trust Deed dated 24 January 2005 (“**Governing Rules**”) made by the said Faineant Pty Ltd acting in its capacity as Trustee, “**Esther Ruberl Superannuation Fund**” (“**the Fund**”) was established.
- B. By a certain deed dated 7 March 2012, the Governing Rules were amended in the manner set out in that deed.
- C. The Trustee is the original and current Trustee of the Fund.
- D. Clause 2 of the Governing Rules (as amended) provides that the Trustee may by Deed amend the provisions of the Governing Rules.
- E. The Trustee now wishes to further amend the Governing Rules in the manner set out in this Deed of Variation.
- F. Esther Mercedes Ruberl and Ian Alexander Moffatt are the Members of the Fund and by their execution of this Deed of Variation signify their consent to and knowledge of the nature and purpose of the amendments to the Governing Rules as contained in this Deed of Variation.

**AGREED TERMS****1. Replacement of Governing Rules and Date of Effect**

The Governing Rules are by way of amendment varied in their entirety by deleting the provisions comprising the Governing Rules (other than the recitals and the original declaration of trust contained in the Governing Rules), and replacing them with those provisions which are contained in Schedule 1 annexed to this Deed of Variation (“**New Provisions**”), with effect on and from the date of this Deed of Variation (“**Relevant Date**”).

**2. Accuracy of Background**

The above Background details are true and correct in every material particular and shall form part of this Deed of Variation BUT any fact or matter referred to in the Background that is inconsistent with any term or provision hereinafter appearing shall be read as subject to that term or provision.

**3. Acknowledgement by Trustee**

The Trustee confirms the original establishment of the Fund and acknowledges that it holds and will continue to hold all property comprising the Fund on behalf of the Member(s) of the Fund in accordance with the Governing Rules, which will now comprise the New Provisions AND FURTHER that the amendments of the Governing Rules as contained in clause 1 hereof or otherwise under this Deed of Variation or the New Provisions shall not operate as a resettlement or re-establishment of the Fund.

#### **4. Membership requirements**

Any Member of the Fund as at the Relevant Date will be deemed to have complied with any membership requirements contained in the New Provisions.

#### **5. Superannuation Industry (Supervision) Act 1993**

This Deed of Variation shall not take effect, to the extent that:

- 5.1 any one or more of the provisions of this Deed of Variation are not able, allowed or required to take effect pursuant to the provisions of the *Superannuation Industry (Supervision) Act 1993* or any regulations made for the purposes of that statutory enactment; and
- 5.2 the provision is not capable of amendment to enable or allow this Deed of Variation to take effect.

#### **6. Purpose of the Fund**

Subject to the Governing Rules (as amended by this Deed of Variation), the purpose of the Fund is to provide individual personal benefits, pensions or retiring allowances upon the death or retirement of a Member, provided that:

- 6.1 the purpose would not cause the Fund to be a non-complying superannuation fund (as defined for the purposes of the *Income Tax Assessment Act 1936*);
- 6.2 the purpose is a purpose contained in the Governing Rules (as amended by this Deed of Variation);
- 6.3 if the Trustee of the Fund are natural persons the sole or primary purpose of the Fund is to provide old age pensions (as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*).

#### **7. General**

7.1 Nothing contained in this Deed of Variation will be deemed to create a new trust or to be a resettlement/revocation or re-establishment of the Fund AND to the extent that any one or more of the provisions of this Deed of Variation are not able, allowed or required to take effect pursuant to a provision of the *Superannuation Industry Supervision Act 1993* as amended or regulation made for the purposes of that statutory enactment, the provision is amended by deletion to the extent that:

- 7.1.1 it is necessary to remove that or those restrictions beyond the validity of the amendments, or any part of them made pursuant to this Deed of Variation; and
- 7.1.2 the deletion of part or all of the provision does not result in a resettlement of the Fund or the establishment of a new trust; and
- 7.1.3 amendments made by this Deed of Variation are deemed to have occurred after the deletion referred to in this clause.

- 7.2 The Governing Rules, as amended by this Deed of Variation, will in all respects remain in full force and effect AND notwithstanding anything contained in this Deed of Variation to the contrary, this Deed does not and shall not:
- 7.2.1 alter the objects of the Fund;
  - 7.2.2 reduce alter or vary the benefits and entitlements payable to Members from the Fund;
  - 7.2.3 alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
  - 7.2.4 offend the provisions of any relevant Act or Regulation as they exist, from time to time, or any amendment or variation or any relevant Act or Regulation made after the date of this Deed of Variation; or
  - 7.2.5 annul or in any way affect, any binding or non-binding Death Benefit Nomination form provided by any Member of the Fund to the Trustee of the Fund on or before the date of this Deed of Variation.
- 7.3 This instrument is intended to be, and shall take effect as, a deed notwithstanding any lack of formality in its form, execution or attestation.
- 7.4 Nothing contained in this Deed of Variation shall be deemed to effect, acknowledge, evidence or record any of the following:
- 7.4.1 a transfer of property to the Trustee or to any person or entity who takes as Trustee;
  - 7.4.2 a declaration of Trust;
  - 7.4.3 the creation of an interest in property subject to a trust;
  - 7.4.4 a transfer of an interest in property subject to a trust;
  - 7.4.5 the surrender or renunciation of an interest in property subject to a trust;
  - 7.4.6 the redemption, cancellation or extinguishment of an interest in property subject to a trust; or
  - 7.4.7 a conveyance of any property,
- within the meaning of sub-section 71(3) of the *Stamp Duties Act 1923 (SA)* or otherwise.
- 7.5 If any provision of this Deed of Variation and/or the New Provisions adversely affects the grandfathering provisions or any structures or transactions that the Fund has in place for the in-house assets rules as provided for in the *Superannuation Industry (Supervision) Act 1993* as amended or regulation made for the purposes of that

statutory enactment, then the offending words or provisions shall be read down so as not to adversely affect any such transactions or structures that are in place.

**8. Declaration by Trustee**

The Trustee declares that it holds the fund constituted under the Governing Rules upon the trusts as set out in the Governing Rules, as altered by this Deed of Variation.

**9. Members' Consent**

The Members consent to and acknowledge the nature and purpose of the variations to the Governing Rules contained in this Deed of Variation.

**10. Costs**

All costs of and incidental to the giving of instructions for and the preparation execution and stamping of this Deed of Variation shall be borne by the Trustee acting in its capacity as Trustee of the Fund.

**SIGNED** as a Deed.

**EXECUTED** by )  
**FAINEANT PTY LTD** in accordance )  
with the *Corporations Act 2001*: )  
)  
)

.....  
Esther Mercedes Ruberl  
Director/Secretary

.....  
Ian Alexander Moffatt  
Director

*\*If only 1 person has signed that person states that he/she is the sole director and sole secretary of the company.*

**SIGNED** by )  
**ESTHER MERCEDES RUBERL** )  
in the capacity as Member )  
in the presence of: )

.....

.....  
Signature of witness

.....  
Full name of witness

**SIGNED** by )  
**IAN ALEXANDER MOFFATT** )  
in the capacity as Member )  
in the presence of: )

.....

.....  
Signature of witness

.....  
Full name of witness

## SCHEDULE 1 – NEW PROVISIONS

### AGREED TERMS

#### 1. Interpretation

##### 1.1. Definitions

In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:

“**Act**” means, as the context requires:-

- (a) the Tax Act,
- (b) the *Superannuation Industry (Supervision) Act 1993*,
- (c) the *Superannuation Guarantee Charge Act 1992*,
- (d) the *Superannuation Guarantee (Administration) Act 1992*,
- (e) the *Superannuation Contributions Tax Act Imposition Act 1997*,
- (f) the *Privacy Act 1988*, and any other law relating to privacy that is applicable to the Fund or to the Trustee,
- (g) the *Family Law Act 1975*,
- (h) the *Trustee Act 1936* (South Australia) or the equivalent legislation of any other State or Territory of Australia relating to trustees and which is applicable to the Trustee,
- (i) and any other statute, regulation or law relating to any superannuation fund which is a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*,

AND any amendment, replacement or re-enactment for the time being in force together with any rulings or regulations or guidelines made or issued under such legislation and any other present or future legislation which must be complied with for the Fund to qualify as a Complying Superannuation Fund.

“**Annuity**” has the same meaning as in Superannuation Law.

“**Associate**” has the same meaning as in Superannuation Law.

“**Beneficiary**” means a person (including a Member or former Member) presently and absolutely beneficially entitled to receive a benefit from the Fund at the relevant time which shall include a Pensioner (other than a Pensioner who is a Member at that time).

“**Binding Nomination**” means a Binding Nomination referred to in clause 5.5.6, being a written notice in such form as the Trustee may accept from time to time.

“**benefit**” means any amount paid or payable by the Trustee from the Fund to a Beneficiary or any amount to which a Member may be presumptively entitled under this Deed.



**“Child”** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* and includes a step-child, an adopted child, an ex-nuptial child, a child of a spouse, a person recognised by the Trustee as an adopted child and any person who, in the opinion of the Trustee, is or was actually maintained by the Member as the child of a Member.

**“Commencement Date”** means 24 January 2005.

**“Commissioner”** means, as the context requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities & Investments Commission or any other regulatory body which has responsibility for the supervision of the conduct of superannuation funds.

**“Commute”** means, in relation to a Pension, to substitute such Pension (in whole or in part) for a lump sum amount or for another Pension or Annuity.

**“Complying Superannuation Fund”** in relation to a year of income means a superannuation fund that complies with and satisfies the requirements set out in Sections 42 and 45 of the *Superannuation Industry (Supervision) Act 1993* and is a complying superannuation fund in accordance with Superannuation Law.

**“Constitutional Corporation”** has the same meaning as in Superannuation Law.

**“Custodian”** has the same meaning as in the Act.

**“Deed”** means this Deed by which the Fund has been established, as amended from time to time.

**“Dependant”** in relation to a Member or a former Member, means:

- (a) the Spouse of the Member or former Member;
- (b) any Child of the Member or former Member;
- (c) the widow or widower of a deceased Member or deceased former Member;
- (d) any person with whom the Member or former Member had an Interdependency Relationship at the relevant date; and
- (e) any person who in the opinion of the Trustee is or was at the relevant date wholly or partially financially dependent on the Member or who has or had the right to look to the Member for support.

**“Eligible Fund”** means a fund or entity (including a regulated superannuation fund, an approved deposit fund and a deferred annuity) which, in accordance with Superannuation Law, may accept benefits rolled over from the Fund, or pay benefits rolled over to the Fund.

**“Employee”** means a person who is in the Service of an Employer and includes any person who is a director of an Employer which is a company.

**“Employer”** means any person, firm or corporation who employs a Member and who has at any time, or whose Associates have at any time, made contributions to the Fund in respect of that Member.

**“Fund”** means the Fund which has been established on the terms of this Deed.

**“Insurance”** means any policy of insurance effected by the Trustee:

- (a) to provide the whole or part of a death or permanent disablement benefit payable to or for a Member; or
- (b) to provide the whole or part of a temporary disablement benefit payable to or for a Member.

**“Interdependency Relationship”** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*, subject to the Regulations made thereunder, and includes, where permitted by Superannuation Law, two persons (whether or not related by family) if:

- (a) they have a close personal relationship; and
- (b) they live together; and
- (c) one or each of them provides the other with financial support; and
- (d) one or each of them provides the other with domestic support and personal care

AND FURTHER, if two persons (whether or not related by family) satisfy the requirement of paragraph (a) but do not satisfy the other requirements because either one or both of them suffers from a physical, intellectual or psychiatric disability, they have an Interdependency Relationship.

**“legal personal representative”** or **“legal personal representative(s)”** of a person means the executor(s) of the Will or the administrator(s) of the estate of the deceased Member, the trustee of the estate of a Member under a legal disability or a person or persons who hold(s) an enduring power of attorney granted by a Member, appointed as such under any Australian legislation.

**“Member”** means a person who is participating in the Fund as a Member or (as the context requires) a person who has become entitled to receive a benefit under the Deed or for whom an amount is preserved within the Fund and includes a person in receipt of a Pension from the Fund but does not include a person who has an interest in a Member’s interest in the Fund solely by virtue of an agreement or court order made under the *Family Law Act 1975*.

**“Member’s Account”** in respect of a Member at any date means the accrued amount standing in the Member’s Account at that date as determined under clause 11.

**“Minimum Benefit”** has the same meaning as in Superannuation Law.

**“Old-Age Pensions”** has the same meaning as defined in Section 10 of the *Superannuation Industry (Supervision) Act 1993*.

**“Pension”** except in the expression Old-Age Pensions includes a benefit provided by a fund, if the benefit is taken to be a pension for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

**“Pensioner”** means a Member who is entitled to receive or has applied to receive benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of a Pension.

**“Pension Benefit Account”** means an account that provides a retirement benefit.

**“Retirement”** in relation to a Member has the same meaning as in Superannuation Law.

**“Reversionary Beneficiary”** means a Dependant nominated by a Pensioner and in default of a nomination by the Pensioner a Dependant nominated by the Trustee who is eligible to receive a benefit upon the death of a Pensioner.

**“Review Date”** means the thirtieth day of June in each year or such other date or dates as the Trustee determines.

**“RSA”** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**“Self Managed Superannuation Fund”** has the same meaning as in Superannuation Law.

**“Service”** means continuous service including any period during which a Member is off work because of injury or illness and receives a regular income from an Employer or any insurance scheme and other additional periods such Employer decides to be service for this Deed.

**“Spouse”** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* and, in relation to a person includes another person (whether of the same sex or a different sex) who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

**“Superannuation Law”** means the requirements prescribed by the Act and any other present, replacement, additional or future legislation and any requirements, announcements, obligations, rulings, or regulations or guidelines made or issued under such legislation (including any written directives, approvals or authorisations given by the Commissioner to the Trustee) as in force from time to time and applicable to the operation of a Complying Superannuation Fund and which the Trustee must comply with in order for the Fund:

- (a) to qualify for concessional Tax treatment as a Complying Superannuation Fund;  
or
- (b) to meet any other requirements of the Commissioner.

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

**“Superannuation Lump Sum”** has the same meaning as in the Tax Act.

**“Tax”** means income tax, capital gains tax, tax on Superannuation Lump Sum, payroll tax, land tax, stamp duty, withholding tax, stamp financial institutions and other duties and any other tax paid or payable by the Trustee on behalf of the Fund, contributions to the Fund, benefits payable from the Fund or the Deed or, where applicable, by any Member, former Member, Dependant or Beneficiary.

**“Tax Act”** means the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* (both as amended) as well as the *Income Tax (Transitional Provisions) Act 1997* and any replacement or additional legislation and any rulings or regulations or guidelines made or issued under those Acts.

**“Temporary Finance”** means finance arranged by borrowing in order to overcome cash flow problems in the payment of benefits or for any other purposes for the time being permitted by Superannuation Law provided that such borrowing complies with all applicable conditions specified by Superannuation Law.

**“Trustee”** means the Trustee(s) for the time being of the Fund whether original additional or substituted.

**“Unallocated Reserve Account”** means the account established and maintained under clause 8.

## 1.2. Interpretation

- 1.2.1. A reference to an act of a Parliament is:
  - (a) unless otherwise stated, a reference to an act of the Parliament of the Commonwealth of Australia; and
  - (b) in every case, a reference to it as it is amended from time to time and any replacement or additional legislation and any rulings or regulations or guidelines made or issued under it.
- 1.2.2. If any term defined in Superannuation Law is used in this Deed and is not defined in this Deed it shall, unless the context is inconsistent, have the same meaning as in Superannuation Law.
- 1.2.3. In this Deed words importing the singular number include the plural and vice versa and words importing the masculine or neuter gender include all genders as the case may require.
- 1.2.4. The headings in this Deed are for the convenience of reference only and shall not affect the Deed's interpretation.
- 1.2.5. This Deed shall be read and construed on the basis that the provisions of Superannuation Law are, to the extent to which they impose obligations on the Trustee in order that the Fund is a Complying Superannuation Fund, incorporated in this Deed and if there is any inconsistency between a provision of this Deed and a provision of Superannuation Law or the Tax Act, the statutory provisions shall prevail.
- 1.2.6. Notwithstanding any provision of this Deed, any covenant or other requirement required by Superannuation Law to be included in this Deed is deemed to be included as if every such covenant or requirement was set out in this Deed on and from the date that covenant or requirement is required to be so included.
- 1.2.7. If Superannuation Law no longer requires any such covenant or requirement to be so included then that covenant or requirement ceases to be included.
- 1.2.8. If any such covenant or requirement or its operation is pursuant to the provisions of Superannuation Law modified then the Trustee is only required to comply with the covenant or requirement as it may be so modified.
- 1.2.9. If any provision in this Deed is invalid or unenforceable, all other provisions in this Deed which are self-sustaining and capable of separate enforcement will continue to be valid and enforceable and, if necessary, in order to avoid any provision of this Deed being made invalid by any law, the provision may be read down or severed to the extent required so as to preserve the validity of the provision or this Deed (as the case may be).

## 2. The Fund

- 2.1. The Fund constituted by this Deed is called **Esther Ruberl Superannuation Fund**, and commences on the Commencement Date.

- 2.2. The Fund shall consist of all of the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts in this Deed and shall be established and maintained by:
  - 2.2.1. contributions made in accordance with this Deed;
  - 2.2.2. interest and dividends arising from any investment and the accumulation thereof;
  - 2.2.3. profits and other benefits arising from any investment and the accumulation thereof; and
  - 2.2.4. monies, investments and other property rolled over or transferred to the Fund in accordance with Superannuation Law.
- 2.3. The Fund is vested in the Trustee, and the Trustee will, at all times, manage and control the Fund subject to Superannuation Law and this Deed.
- 2.4. Upon the commencement of the Fund, the Trustee shall notify the Commissioner of its election that Superannuation Law is to apply to the Fund.
- 2.5. During any period in which the Trustee of the Fund is not a Constitutional Corporation, the primary purpose of the Fund is the provision of Old-Age Pensions.

### **3. Membership**

#### **3.1. Application for Membership**

- 3.1.1. Subject to clause 3.1.2, any person accepted by the Trustee (in this clause 3, "**Applicant**") may be admitted to membership of the Fund, on such terms as the Trustee considers appropriate.
- 3.1.2. The Trustee must not admit an Applicant to membership of the Fund if:
  - (a) the Applicant is not permitted by Superannuation Law to be admitted to membership of the Fund;
  - (b) the Applicant has not applied in writing on a form approved by the Trustee to be admitted to membership of the Fund;
  - (c) admission of the Applicant will result in the Fund ceasing to be a Self Managed Superannuation Fund; or
  - (d) the Applicant has not agreed in writing to be bound by the terms and conditions of this Deed.

#### **3.2. Admission to Membership**

Upon admission to membership of the Fund by the Trustee, the Applicant will become a member of the Fund and will be bound by the terms and conditions of this Deed.

#### **3.3. Applicants, Members and Beneficiaries to provide information**

- 3.3.1. Each Applicant, Member and Beneficiary must:
  - (a) supply to the Trustee from time to time such information as may be requested by the Trustee to enable the Trustee to administer the Fund in accordance with Superannuation Law or for the purposes of any

investigation or otherwise in connection with the Fund, including information relating to the amount of deductible contributions, the acceptance of contributions and the payment of benefits; and

- (b) if required by the Trustee, submit to medical examinations by a registered medical practitioner nominated by the Trustee.

- 3.3.2. A Member must if and when so required by the Trustee, provide the Trustee with a written consent to the roll-over or transfer of the Member's benefits.

### **3.4. Cessation of Membership**

A person ceases to be a Member when all of the Member's benefits in the Fund have been:

- 3.4.1. paid in accordance with Superannuation Law to or for the Member;
- 3.4.2. rolled over to an Eligible Fund; or
- 3.4.3. transferred to another regulated superannuation fund, an approved deposit fund, an RSA or an Exempt Public Sector Superannuation Scheme.

### **3.5. Voting by Members**

Subject to Superannuation Law:

- 3.5.1. The legal personal representative(s) of a Member who is under a legal disability or of a deceased Member shall be entitled to exercise such Member's power to vote as a Member; and
- 3.5.2. If there is a deadlock in Member voting on an issue then the Member with the largest Member's Account balance shall be entitled to a casting vote; and
- 3.5.3. Member voting on any issue shall be otherwise as is provided for in this Deed.

### **3.6. Each Member may appoint one or more Attorney(s)**

Subject to Superannuation Law:

- 3.6.1. Each Member may appoint one or more Attorney(s) under an Enduring Power of Attorney to be granted in accordance with the law applicable within any State or Territory of Australia.
- 3.6.2. In the event that more than one Attorney is appointed under a Member's Enduring Power of Attorney then such Attorneys shall only have one (1) vote between them.

## **4. Contributions**

### **4.1. Acceptance of contributions**

4.1.1. The Trustee:

- (a) may accept a contribution in respect of a Member from any person to the extent permitted by Superannuation Law;

- (b) may refuse to accept a contribution in respect of a Member for any reason whatsoever;
  - (c) must not accept a contribution in respect of a Member if Superannuation Law does not permit the acceptance of that contribution.
- 4.1.2. If the Trustee has accepted a contribution (or any part of it) in respect of a Member contrary to Superannuation Law, the Trustee:
- (a) must repay that contribution (or the relevant part of it) less any amounts paid out for expenses or Taxes on that contribution;
  - (b) may, but is not required to, pay any earnings or interest attributable to that contribution (or the relevant part of it); and
  - (c) may otherwise deal with that contribution (or the relevant part of it) as permitted or required by Superannuation Law.
- 4.1.3. The Trustee may accept an asset as a contribution for a Member PROVIDED that:
- (a) the Superannuation Law permits the Trustee to acquire such an asset; and
  - (b) the acceptance of such an asset by the Trustee would be consistent with the Investment Strategy of the Fund.
- 4.1.4. Subject to the requirements of the Superannuation Law, contributions may be made either in cash or by transfer to the Fund of an asset in specie or by any other means as authorised by the Superannuation Law. If a contribution is made by the transfer of an asset to the Trustee, the amount of the transfer will be the market value of that asset at the time of its transfer, and the transfer will be undertaken on such terms and conditions as are determined by the Trustee.
- 4.1.5. Notwithstanding the preceding provisions of this clause, if any land owned by a Member or Members has been transferred to the Trustee as set out in clauses 4.6 or 4.7, the Trustee is not permitted to make any amendment to clauses 4.6 or 4.7 or introduce any new rule which might allow any Member of the Fund other than the Member or Members transferring the land to the Fund to have any benefit in that land other than with the consent of that Member/those Members and subject however in any event to the Superannuation Law.
- 4.1.6. Any amount of a tendered contribution by or on behalf of a Member that exceeds the Non Concessional Contributions cap for that Member:
- (a) shall not form part of the Fund property; and
  - (b) shall be held by the Trustee (along with any associated earnings) on a separate bare trust to be returned to the contributor.

## **4.2. Deductions from contributions**

The Trustee may deduct from any contribution or other payment made to the Fund:-

- 4.2.1. any Tax that is payable on or for it; or

- 4.2.2. any expense attributable to a Member for whom the Fund contribution or payment is made.

#### **4.3. Application of contributions**

- 4.3.1. The contributions accepted by the Trustee and any other money or property forming part of the Fund shall be held on trust by the Trustee and applied by the Trustee in accordance with this Deed; and
- 4.3.2. The Trustee may, maintain separate and/or subaccounts within each Member's Member Account on such basis as the Trustee considers appropriate having regard to the nature of the Member's benefit.

#### **4.4. Transfers from other funds**

If a Member is or was a member or beneficiary under any other Complying Superannuation Fund, Eligible Fund or Annuity (in this clause 4.4, "**Other Fund**"), the trustee may receive from the trustee of the Other Fund money or assets in respect of the interest of the Member in the Other Fund. The Trustee will hold that money or those assets as part of the Fund subject to any requirements of Superannuation Law and will credit the Member's Account in the manner agreed between the Trustee and the Member to take account of the money or assets received.

#### **4.5. Contributions splitting**

- 4.5.1. Notwithstanding any other provision of this Deed, but subject to Superannuation Law, the Trustee may accept a Splitting Application from a Member.
- 4.5.2. If the Trustee accepts a Splitting Application, the Trustee must:
  - (a) roll over, transfer or allot the amount specified in the Splitting Application for the benefit of the receiving spouse in accordance with the Splitting Application and Superannuation Law; and
  - (b) take such other steps as may be necessary or expedient to give effect to the Splitting Application.
- 4.5.3. Subject to Superannuation Law, a Splitting Application may be in such form, or contain such information, as the Trustee may from time to time accept.
- 4.5.4. In this clause 4.5:
  - (a) "**Splitting Application**" means an application by a Member to the Trustee, requesting the Trustee to roll over, transfer or allot an amount of the splittable contributions made by, for, or on behalf of that Member for the benefit of that Member's spouse.
  - (b) "**receiving spouse**", "**splittable contribution**" and "**spouse**" all have the same meaning as in Superannuation Law.

#### **4.6. In Specie contributions of land**

Subject to clause 4.1.5, despite anything else in this Deed, if any Member makes any contribution to the Fund in the form of an in specie transfer to the Trustee of an interest in land that is beneficially owned by that Member:



- 4.6.1. the Trustee must hold that interest in land solely and exclusively for the benefit of that Member; and
- 4.6.2. if two or more Members who beneficially own an interest in land in various proportions or as joint tenants, make a contribution to the Fund in the form of an in specie transfer of their interests in that land, the Trustee must hold the interests in such land solely and exclusively for the benefit of those Members in the same proportions and interests that they held that land prior to the transfer.

#### **4.7. Acquisition of Member's land**

Despite anything else in this Deed, if any Member agrees to sell and transfer any Member's land or any interest in land to the Trustee as an acquisition for the Fund, which land was beneficially owned by a Member:

- 4.7.1. the Trustee must hold the Member's interest acquired in the land solely and exclusively for the benefit of that Member AND if any land beneficially owned by a Member (that is land used wholly or mainly for the business of primary production) is transferred by that Member to the Trustee as an acquisition for the Fund and the transfer is exempt from stamp duty under Section 71CC of the *Stamp Duties Act 1923* (South Australia) without affecting sub-clause 4.6 and this sub-clause 4.7, the land cannot be applied, transferred or vested for the benefit of any person who is not a "relative" as defined in sub-section 5 of Section 71CC of the *Stamp Duties Act 1923* (South Australia) or a trustee of that relative of the Member who transferred the land and the restrictions contained in this sub-clause cannot be revoked or amended under clause 17; or
- 4.7.2. if two or more Members who beneficially own an interest in land in various proportions or as joint tenants, agree to sell and transfer their interests in that land to the Fund, the Trustee must hold the interests in the land so acquired solely and exclusively for the benefit of those Members of the Fund in the same proportions and interests as they held that land prior to the sale and transfer

AND if any land beneficially owned by a Member (that is land used wholly or mainly for the business of primary production) is transferred by that Member to the Trustee as an acquisition for the Fund and the transfer is exempt from stamp duty under Section 71CC of the *Stamp Duties Act 1923* (South Australia) without affecting sub-clause 4.6 and this sub-clause 4.7, the land cannot be applied, transferred or vested for the benefit of any person who is not a "relative" as defined in sub-section 5 of Section 71CC of the *Stamp Duties Act 1923* (South Australia) or a trustee of that relative of the Member who transferred the land and the restrictions contained in this sub-clause cannot be revoked or amended under clause 17.

#### **4.8. Segregation of assets and valuation**

- 4.8.1. Subject to Superannuation Law, the Trustee may segregate Fund assets as being specifically referable to a Member for any purpose; and
- 4.8.2. The Trustee may segregate from other assets those assets which are to fund any Pension of a person under this Deed. The Trustee must value those assets at least annually. If such assets are insufficient or more than sufficient to fund any such Pension, the Trustee must do anything that the Superannuation Law requires. The Trustee must obtain any certificate of adequacy that the Trustee considers necessary in respect of those assets in order to comply with the Tax Act or the Superannuation Law; and

- 4.8.3. If the Trustee is in receipt of a contribution in specie then, subject to clause 4.6, the asset(s) contributed shall create an interest in the Fund in favour of the Member and the said asset(s) shall be segregated in favour of the Member unless otherwise agreed between the Trustee and the Member.

## **5. Benefits**

### **5.1. General**

- 5.1.1. Subject to the provisions of this Deed, a benefit equal to the sum of the Member's Account and the proceeds of any Insurance (if applicable) will become payable in respect of a Member if Superannuation Law requires or permits the Member's benefit to be cashed.
- 5.1.2. If Superannuation Law requires or permits some, but not all, of Member's benefit to be cashed, the Trustee may:
- (a) cash that part of the Member's benefit; and
  - (b) debit the Member's Account in such manner as the Trustee considers appropriate with an amount equal to that part of the benefit which has been cashed.
- 5.1.3. Except as permitted by Superannuation Law, the Trustee may not adversely alter a Member's benefits.

### **5.2. Payment of benefits**

- 5.2.1. Notwithstanding any provision of this Deed, the Trustee may, in its absolute discretion, pay all or part of a Member's benefit to the Member in such manner, and on such conditions, as the Trustee and the Member may agree and Superannuation Law may permit.
- 5.2.2. Subject to Superannuation Law:
- (a) benefits will only be paid on application being made by the person entitled;
  - (b) the payment of any benefit is subject to the person claiming that benefit producing such evidence, doing such acts and executing such documents as the Trustee reasonably requires, and the Trustee may postpone the payment of any benefit until any such requirements of the Trustee have been met to the Trustee's satisfaction; and
  - (c) in paying a benefit, the Trustee may act on any proofs or presumptions it considers appropriate.
- 5.2.3. If the Member so requests, the Trustee may pay to a life insurance company or registered organisation the whole or such part as the Member specifies of a rolled over amount for the purpose of purchasing for the Member an annuity of such type as the Member and the Trustee agree, including an annuity which meets the pension and annuity standards of Superannuation Law.
- 5.2.4. The Trustee may deduct from any benefit payable to or in respect of a Member:
- (a) any Tax that is payable in respect of the benefit; and

- (b) any expense that has been paid or is payable by the Trustee in connection with the payment of the benefit.

5.2.5. The Trustee shall notwithstanding any other provision of this Deed ensure that the payment of a benefit from the Fund in relation to a Member satisfies Superannuation Law for such matters as:-

- (a) the amount of the benefit payable from the Fund;
- (b) the timing of the payment of the benefit and the circumstances in which the benefit is paid from the Fund;
- (c) the persons who may be paid the benefit;
- (d) where the Trustee is not a Constitutional Corporation, the fact that the primary purpose of the Fund is the provision of Old-Age Pensions; and
- (e) such other aspects or circumstances about benefits as are for the time being relevant.

5.2.6. Where permitted by Superannuation Law:

- (a) the Trustee may with the agreement of the Member or beneficiary to whom a benefit is payable transfer investments of the Fund of equivalent value to such Member or beneficiary in lieu of paying the whole or part of the amount otherwise payable under this Deed provided that the Member or beneficiary pays all costs, fees or Taxes incurred or payable in connection with the transfer; and
- (b) during any period in which the Trustee is not a Constitutional Corporation, the transfer of investments of the Fund to a Member is subject to:
  - (i) the Member requesting such transfer; and
  - (ii) the requirement that the Trustee approve such transfer having regard to the primary purpose of the Fund, being the provision of Old-Age Pensions.

### **5.3. Preservation of benefits**

Notwithstanding any other provisions of this Deed, if the Trustee considers benefits that relate to a Member are required to be preserved in the Fund (or within another fund or entity to which the benefits may be rolled over or transferred) in order to comply with Superannuation Law, the benefits shall be so preserved until Superannuation Law permits them to be cashed.

### **5.4. Form of benefits**

5.4.1. Subject to clause 5.4.2 and Superannuation Law, if a Member becomes entitled to be paid a lump sum benefit, the Member may request the Trustee to pay some or all of that benefit in the form of a Pension.

5.4.2. Subject to Superannuation Law, during any period in which the Trustee is not a Constitutional Corporation, a Member's benefit must be paid in the form of a Pension, unless the Member requests the Trustee to pay some or all of that benefit in the form of a lump sum.

- 5.4.3. If a Member (or Beneficiary) takes any benefit in the form of a Pension, and Superannuation Law prescribes certain minimum standards in relation to that Pension (in this Deed and any Binding Nomination made by a Member clause 5.4, "**Pension Standards**"):
- (a) the agreement between the Trustee and the Member (or Beneficiary) that sets out the terms of that Pension must include the Pension Standards; and
  - (b) the Pension Standards are deemed to be incorporated into this Deed, but only to the extent that the Deed relates to that Pension paid to the Member (or Beneficiary).
- 5.4.4. Subject to Superannuation Law, at the request of a Member entitled to a Pension, the Trustee may Commute all or part of a Pension, to the extent and as permitted by the Pension Standards AND the Trustee must then (in any combination the Trustee decides):
- (a) reduce the number of instalments of any remaining Pension;
  - (b) reduce the amount of each instalment of any remaining Pension
- AND if the Trustee Commutes all or part of a Pension to a lump sum amount in accordance with this sub-clause 5.4.4, the Trustee may, at the request of the Member and to the extent permitted by the Pension Standards, (in any combination the Trustee decides):
- (c) pay that lump sum amount or any part of it to the Member; or
  - (d) retain that lump sum amount or any part of it in the Member's Account of the Member concerned.
- 5.4.5. Subject to Superannuation Law, the Trustee is empowered at any time following the commencement of the Pension of a Member to alter or vary the terms of any such existing Pension of a Member in such manner as the Trustee may think fit including, without limitation and subject to Superannuation Law, to change an existing Pension of a Member at any time (without prior to so doing having to Commute such existing Pension) from/to:
- (a) one type of Pension to another;
  - (b) a reversionary Pension to a Pension which is not reversionary and vice versa;
  - (c) a Pension which is not reversionary to a Pension which reverts automatically on the death of a Member to a Dependant of such Member and vice versa;
  - (d) Commute and roll over a Pension, if applicable, to another benefit; and
  - (e) Commute all or part of a Pension to a lump sum amount and retain that lump sum amount or any part of it in the Member's Account of the Member concerned .
- 5.4.6. Upon receipt of a request to pay a benefit or payment in respect of a Member, the Trustee shall (in the absolute discretion of the Trustee and subject to Superannuation Law and any Binding Nomination of such Member) decide:

- (a) if the benefit is to be provided by the Fund;
- (b) the amount of the benefit, its commencement, form, manner of payment, timing, the continuance of any payment(s) or the commutation (partial or otherwise) of any existing Pension into a lump sum or back into accumulation phase;
- (c) if the benefit is to be payable as a Pension as well as (subject to 5.4.5 hereof) the terms and type of Pension involved;
- (d) to whom any such benefit is to be paid; and
- (e) any other matters, attributes or features which are to apply thereto.

## 5.5. Death benefits

5.5.1. If a Member dies, the amount of the benefit payable (in this clause 5.5, "**Death Benefit**") shall be equal to the sum of:

- (a) the Member's Account;
- (b) the proceeds of any Insurance received by the Trustee as a result of the Member's death; and
- (c) such amount (if any) in respect of which the Trustee may claim a deduction under section 295 - 485 of the *Income Tax Assessment Act 1997*.

5.5.2. Subject to clauses 5.5.3 and 5.5.4, the Trustee must pay the Death Benefit as soon as practicable:

- (a) where the Member has served on the Trustee a Binding Nomination and that Binding Nomination is valid and in effect at the time of the Member's death – in accordance with that Binding Nomination; or
- (b) where the Member has not served on the Trustee a valid Binding Death Benefit Nomination, or any Binding Nomination served on the Trustee is not valid or in effect at the time of the Member's death - to or for the benefit of such one or more of the deceased Member's Dependants and the deceased Member's legal personal representative(s) in such shares and in such manner as the Trustee in its absolute discretion determines.

5.5.3. Subject to Superannuation Law, the Trustee shall within 12 months of the death of a Member determine the person or persons to whom the Member's benefits are to be paid in accordance with clause 5.5.2 and shall notify such person or persons in writing. If the Trustee is of the opinion that a Member has no Dependants at the time of the Member's death and no determination and notification is made by the Trustee within the period of 12 months of the death of the Member, the Member's benefits shall be paid to the Member's legal personal representative(s). However, if no grant of probate or letters of administration shall have been made in respect of the estate of such Member within 12 months from the date of the Member's death, or such longer period as the Trustee determines, then the Member's benefits shall be applied by the Trustee in payment to any individual, subject to Superannuation Law.

5.5.4. Subject to Superannuation Law:

- (a) subject to sub-clauses 5.5.4(b) and 5.5.4(c) hereof, if a Member who is in receipt of a Pension from the Fund dies while a balance remains in the Member's Account and the Member has nominated a Reversionary Beneficiary in respect of that Pension, the Trustee shall pay the Pension to that Reversionary Beneficiary during the Reversionary Beneficiary's life or until such time as the balance in the Member's Account is eliminated, with the Reversionary Beneficiary to have the same rights with respect thereto as provided to a Member in accordance with this Deed; and
- (b) in any event the existing Pension of a deceased Member shall automatically revert to his/her spouse with immediate effect from the time of the death of such deceased Member UNLESS such deceased Member has in place a valid Binding Nomination containing a contrary direction, in which case the Death Benefit of such deceased Member shall, subject to Superannuation Law, be paid in accordance with the directions of such deceased Member as contained in such Binding Death Benefit Nomination; and
- (c) if a deceased Member's valid Binding Nomination is inconsistent with the terms of a Pension of such Member (be it a reversionary Pension or otherwise) then such Binding Nomination shall prevail and override such Pension terms to the extent of any such inconsistency.

5.5.5. The Trustee may deduct from any benefit payable to or in respect of a Member:

- (a) any Tax that is payable in respect of the benefit; and
- (b) any expense that has been paid or is payable by the Trustee in connection with the payment of the benefit.

5.5.6. A Member may serve on the Trustee a Binding Nomination that requires the Trustee to provide any Death Benefit to a particular person or persons specified in the Binding Nomination, being a Dependant or Dependents and/or the legal personal representative(s) of such Member AND may specify the form in which those benefits are to be paid to each person nominated. For the purposes of clause 5.5.2, a Binding Nomination will not be valid and in effect at the time of the Member's death if, at that time:

- (a) paying the Death Benefit in accordance with the Binding Nomination would be contrary to Superannuation Law;
- (b) any person nominated in the Binding Nomination:
  - (i) is not a Dependant or the legal personal representative(s) of the Member; or
  - (ii) has predeceased the Member; or
- (c) any Spouse nominated in the Binding Nomination was divorced from, or was no longer residing with the Member (other than as a result of either or both of the Spouse and the Member suffering from a physical, intellectual or psychiatric disability); or
- (d) the Member has revoked the Binding Nomination in writing.

- 5.5.7. Regulation 6.17A (and specifically the three (3) year rule contained in Regulation 6.17A(7)) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) shall not apply to any Binding Nomination made by a Member of the Fund AND subject to the right of a Member to revoke his/her Binding Nomination in writing at any time or to limit the duration of his/her Binding Nomination to a date specified by the Member therein, it shall be permissible for any Binding Nomination made by a member of the Fund to continue indefinitely as a Non-Lapsing Binding Nomination.
- 5.5.8. Following a Member providing a Binding Nomination to the Trustee it shall be presumed, unless the Trustee within two (2) weeks of receiving such Binding Nomination advises the Member to the contrary, that such Binding Nomination is in a form acceptable to the Trustee.
- 5.5.9. Subject to Superannuation Law, it shall be permissible for the duly appointed attorney(s) (appointed under a current General & Enduring Power of Attorney) of any Member of the Fund who has lost his/her mental capacity to renew any existing death benefit nomination (including any Binding Nomination) which pertains to the superannuation entitlements within the Fund of such Member, providing such attorney(s) are authorised or not prohibited to do so by the General & Enduring Power of Attorney of such Member.
- 5.5.10. A Binding Death Benefit Nomination which directs the payment of a benefit to be paid to the spouse of a Member of the Fund is deemed to have been revoked by the Member concerned if proceedings have been commenced pursuant to the *Family Law Act 1975* seeking dissolution of that Member's marriage to that spouse or Orders of the Family Court of Australia as to the division of property/property settlement between them consequent upon their separation.
- 5.5.11. Subject to Superannuation Law and sub-clause 5.5.4 any Binding Nomination of a Member to the contrary, a Member's Death Benefit may be paid or applied in such form as the Trustee decides, in the absolute discretion of the Trustee, including in the form of one or more lump sums, one or more Pensions, or one or more Annuities or other periodic payment(s), to the extent it would not result in any provision of the SIS Act or SIS Regulations or the Superannuation Law being breached or would otherwise cause the Fund to cease being a complying Superannuation Fund.
- 5.5.12. Subject to Superannuation Law, a Binding Nomination may specify, without limitation, to whom, how and when any Death Benefit is to be paid and/or whether any such Death Benefit payment is to:
- (a) have immediate effect or be postponed in its effect;
  - (b) be contingent upon any event or lapse of time;
  - (c) be by lump sum or pension or a combination of both;
  - (d) comprise a proportion of a Member's interest and/or one or more specified assets and/or a particular part or amount in the Fund;
  - (e) prescribe limitations and conditions as to the amounts payable under any lump sum or pension;
  - (f) specify the type of Pension and whether a Pension is to be reversionary or not or commutable or not;

- (g) specify a maximum Pension drawdown for any period or otherwise and/or the ultimate disposition of the underlying Pension assets following the death of a nominated Reversionary Beneficiary of a deceased Member's Pension;
- (h) incorporate alternate or substitute payment recipients/beneficiaries; and
- (i) be otherwise dealt with in any other manner specified therein.

5.5.13. A Member may by notice in writing revoke any Binding Nomination made by such Member at any time prior to that Member's death.

## **5.6. Insurance of benefits**

5.6.1. The Trustee may take out Insurance in respect of a Member.

5.6.2. The Trustee is not required to pay to or for a Member any benefit in respect of which the Trustee has taken out Insurance except to the extent that the Trustee has received the proceeds of such Insurance.

## **5.7. Transfer In Specie**

The Trustee may, with the consent of a Beneficiary or the legal personal representative(s) of a deceased Member to whom a benefit is payable, transfer investments of the Fund in specie (including, without limitation, any Insurance of equivalent value) to such Beneficiary or the legal personal representative(s) of a deceased Member via the deceased Member's estate in lieu of paying the whole or part of an amount otherwise payable under this Deed.

## **6. Member's Conduct**

6.1. Nothing in this Deed restricts an Employer's right to dismiss an Employee nor can be used to increase damages in any action brought against an Employer for an Employee's dismissal.

6.2. A Member must not charge mortgage transfer assign or otherwise deal with his benefit under the Fund or attempt so to do.

## **7. Forfeiture Of Benefits**

7.1. Subject to Superannuation Law, any Member who assigns or charges or attempts to assign or charge any benefit shall, unless the Trustee otherwise determines, automatically forfeit such benefit PROVIDED THAT this sub-clause 7.1 shall not have the effect of forfeiting any Minimum Benefits of the Member.

7.2. Subject to Superannuation Law, any Member whose benefit (or any part of such benefit) whether by voluntary act, operation of law (including pursuant to the provisions of the *Bankruptcy Act 1966* or otherwise) becomes payable to or vested in any other person, company, government or statutory or other public authority shall, unless the Trustee otherwise determines, automatically forfeit such benefit PROVIDED THAT this sub-clause 7.2 shall not have the effect of forfeiting any Minimum Benefits of the Member.

7.3. A Member may forfeit any part of his or her benefit which is in excess of the Member's Minimum Benefits to the extent and in the manner permitted by Superannuation Law.



- 7.4. If, when a person ceases for any reason to be a Member, a part or the whole of the Member's Account is not payable to or for that Member the part or the whole (as the case may be) of the Member's Account not so paid shall be transferred to and become part of the Unallocated Reserve Account.
- 7.5. The Trustee must transfer all amounts forfeited under this clause 7 to the Unallocated Reserve Account and such amounts shall be applied in accordance with clause 8.
- 7.6. If any part of this clause 7 is construed as, or held to be illegal or invalid, or would operate to jeopardise the status of the Fund as a Complying Superannuation Fund, that part shall be deemed to be deleted from this clause 7 and the legality and validity of the remaining parts of this clause 7 shall not be affected by such deletion.
- 7.7. The Trustee shall only forfeit a Member's entitlement or benefit in accordance with this clause 7. Where such forfeiture does not breach Superannuation Law and the Trustee in giving effect to such forfeiture shall do all such things as may be required by the Superannuation Law.

## **8. Unallocated Reserve Account**

- 8.1. Any monies held in the Unallocated Reserve Account shall not form part of any Member's Account and any income derived by the Fund on the moneys held in the Unallocated Reserve Account shall be credited back to the Unallocated Reserve Account.
- 8.2. Where a forfeiture occurs under clause 7 in respect of a Member and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect that Member, then the Trustee may readjust the rights, entitlements or interest of the Member in the Fund by transferring such amount as the Trustee considers appropriate from the Unallocated Reserve Account to the Member's Account.
- 8.3. The Trustee may from time to time apply the amounts in the Unallocated Reserve Account in any of the following ways (but subject to Superannuation Law and in particular the sole purpose test in Superannuation Law):
  - 8.3.1. in paying any expenses in connection with the establishment or administration of the Fund;
  - 8.3.2. in stabilising the investment earnings of the Fund and in off-setting the effect on the Members' Accounts of investment losses;
  - 8.3.3. in augmenting the benefits of any Members of the Fund;
  - 8.3.4. in providing benefits to the Dependents or the legal personal representative of a deceased Member; and
  - 8.3.5. for any other purpose that may be permitted from time to time under Superannuation Law or by the Commissioner.
- 8.4. If any part of the Unallocated Reserve Account is applied to provide a benefit payable to a Member the amount so applied shall be credited to and form part of the Member's Account.

## **9. Rollovers and Transfers**

- 9.1. The Trustee may, upon being requested in writing by a Member, roll over or transfer, in accordance with Superannuation Law, the whole or any part of the benefits of the Member.

- 9.2. The Trustee may roll over or transfer the whole or any part of the benefit of a Member in circumstances permitted or required by Superannuation Law.
- 9.3. Upon the rollover or transfer of benefits from the Fund, the Trustee shall advise the fund or entity to which such benefits have been rolled over or transferred of the benefits which are not required to be preserved.
- 9.4. Upon such roll over or transfer being effected the Trustee shall be released and discharged accordingly from any claim by that Member in respect of the benefits rolled over or transferred.
- 9.5. Despite anything else in this clause, if any land held by the Trustee as a result of any transfer as described in clauses 4.6 or 4.7, the Trustee must not effect any transfer under this clause unless the trust deed of the transferee fund contains provisions to the effect that any land transferred to the new fund that is held solely and exclusively for a Member must be held solely and exclusively for that Member and also includes a provision to the effect of this clause.

## **10. Records and Audit**

- 10.1. The Trustee must keep a complete record of all matters essential to the administration and working of the Fund and all other matters specified by Superannuation Law and retain them for 5 years or such other period as may be specified by Superannuation Law.
- 10.2. The Trustee must cause proper records to be kept, (including minutes of all meetings of the Trustee and a record of all changes in the Trustee).
- 10.3. The Trustee must prepare an operating statement and annual statement of financial position for each year of income of the Fund.
- 10.4. The Trustee must appoint an approved auditor to the Fund and may remove such auditor.
- 10.5. The Trustee must arrange for the accounts and records of the Fund to be audited after the end of each year of income of the Fund so that the auditor can give the Trustee the auditor's report within the time required by Superannuation Law and in accordance with the requirements of Superannuation Law.
- 10.6. Within the prescribed period after the end of each year of income, the Trustee must submit to the Commissioner an annual return in accordance with Superannuation Law.

## **11. Member's Account**

- 11.1. A Member's Account shall be created by the Trustee in the books of the Fund in the name of each Member of the Fund in which shall:
  - 11.1.1. be recorded as they are received any contributions in respect of the Member which are accepted by the Trustee pursuant to clause 4;
  - 11.1.2. be recorded any amounts credited or debited in accordance with the Deed, including any amounts which are debited by the Trustee for the purpose of:
    - (a) paying any Tax payable on contributions made by or for the Member;
    - (b) paying the Member's portion of the costs, charges and expenses of the Fund;

- 11.1.3. be credited or debited proportionately the Member's share of the net investment earnings or losses of the Fund.
- 11.2. If Insurance on the life of a Member is effected or acquired by the Trustee or if the Trustee enters into an agreement relating to a policy the premiums paid by the Trustee for that policy and the amount (if any) paid by the Trustee to acquire that policy shall be debited against and reduce the Member's Account. Any amount received by the Trustee for the policy (whether on the death or disablement of the Member or surrender of the policy or of any bonus additions thereto or on the sale of the policy or otherwise) shall be credited to and form part of the Member's Account and if in any case the policy on the life of the Member is assigned to the Member or otherwise dealt with at the Member's request the surrender value or the proceeds thereof (as the case may be) shall be deemed to be part of the Member's Account.
- 11.3. The Trustee shall on or before the Review Date in each year determine the net investment earnings or losses of the Fund for the period from the last Review Date and those earnings shall include capital gains and shall be reduced by capital losses which have arisen from the realisation during that year of any of the assets of the Fund and the Trustee shall allocate those earnings or losses to the Members' Accounts and to the Unallocated Reserve Account on a proportionate basis determined by the Trustee and the amount allocated to each Member shall be credited to and shall form part of that Member's Account or (in the case of a net loss) shall be debited against and shall thereby reduce that Member's Account as at the Review Date.
- 11.4. Where it is necessary for the purposes of this Deed to determine at a specified date the amount of a Member's Account, the Trustee shall determine the amount (if any) to be credited to and to form part of the Member's Account, (or to be debited against and thereby to reduce the Member's Account) for the Member's share of the net investment earnings (or losses) of the Fund for the period from the last Review Date until the specified date.
- 11.5. The amount (if any) allocated to the Unallocated Reserve Account in accordance with this clause shall be added to and shall form part of the Unallocated Reserve Account or (in the case of a net loss) shall be debited against and shall thereby reduce the Unallocated Reserve Account as at the Review Date.
- 11.6. In determining the net investment earnings or losses of the Fund for the purposes of this Deed the Trustee may:
  - 11.6.1. at such times as it considers appropriate cause a valuation to be made of the assets of the Fund and shall include any increase in the net value of the assets in the investment earnings and shall reduce the said earnings (or shall increase the investment losses) by any decrease in the net value of the assets;
  - 11.6.2. use a method of averaging which it considers to be appropriate in order to reduce the fluctuations in the rate of net investment earnings (or losses) from year to year and for this purpose the Trustee may obtain actuarial or other advice if it so determines.
  - 11.6.3. In relation to the transfer and segregation of the assets of the Fund:
  - 11.6.4. the Trustee may in accordance with the Tax Act, transfer and segregate any of the assets of the Fund for the sole purpose of discharging the current pension liabilities of the Fund out of those assets or any other purpose permitted by Superannuation Law;

- 11.6.5. the transfer values and annual valuations of the segregated current pension assets must be determined as may be required by the Tax Act;
- 11.6.6. the Trustee may, in accordance with the Tax Act or other applicable laws or as otherwise permitted by Superannuation Law, re-transfer assets segregated in order to meet the requirements of the Tax Act applicable to the segregated current pension assets;
- 11.6.7. the Trustee may do or cause all such things to be done as may be necessary for the Trustee to segregate pension assets or to comply with the provisions of the Tax Act necessary to transfer contributions to a life insurance company or pooled superannuation trust to permit taxation of those contributions in the hands of such company or trust in accordance with the Tax Act or other applicable laws or as otherwise permitted by Superannuation Law;
- 11.6.8. the Trustee may create such Pension Benefit Accounts in respect of pensions payable under this Deed as the Trustee may determine; and
- 11.6.9. the Trustee may take action not prohibited by the Tax Act or by Superannuation Law to revert segregated assets so that they are no longer segregated and with the consent of the relevant Member where required.

## **12. Investments**

- 12.1. Subject always to all the provisions of this clause and to Superannuation Law, monies belonging to the Fund and not required immediately for the payment of benefits or other amounts authorised by this Deed may be invested by the Trustee in or upon any investments of any kind that an individual person can invest in (not limited to investments authorised by law for the investment of trust funds) as the Trustee in its absolute discretion thinks fit but which are consistent with the Fund's investment strategy and without limiting the generality of the foregoing either directly or indirectly:
  - 12.1.1. in trustee investments;
  - 12.1.2. in Insurance;
  - 12.1.3. in the purchase, improvement or mortgage of real or personal property;
  - 12.1.4. on deposit at call or for fixed terms with any bank or building society or insurance company or any other company, partnership or person with or without security;
  - 12.1.5. in shares, stocks, options, debentures, bonds, unsecured notes or other securities;
  - 12.1.6. in the units or sub-units of any property trust or unit trust including units in a pooled superannuation trust, and units in a trading or development trust;
  - 12.1.7. in common funds;
  - 12.1.8. in bills of exchange and other negotiable instruments;
  - 12.1.9. in options, hedging contracts, futures contracts and other financial instruments;
  - 12.1.10. as a principal or part principal in a business (or in units of any unit trust or shares in a company which is the principal of a business);

12.1.11. in the purchase of personal estate, fixtures or plant including for the purpose of lease or rental,

with full power to sell, vary, transpose, replace and otherwise deal with such investments as fully and effectively and with the same unrestricted powers in all respects as an individual person absolutely and beneficially entitled dealing with his own property may do.

- 12.2. Except where permitted by Superannuation Law, the Trustee must not lend a part of the Fund to any Member or relative of a Member either directly or by means of an arrangement entered into for lending money to that Member or relative of that Member in the exercise of a general power of investment of the assets of the Fund by the Trustee.
- 12.3. The Trustee must make all investments of any of the assets of the Fund on an arms length basis.
- 12.4. Except where permitted by Superannuation Law, the Trustee must not borrow or maintain an existing borrowing of, money, whether by way of secured or unsecured loan, otherwise than to secure Temporary Finance.
- 12.5. The Trustee must not acquire or hold in-house assets other than in accordance with Superannuation Law.
- 12.6. Except where permitted by Superannuation Law, the Trustee must not acquire assets from Members or their relatives or related parties.
- 12.7. Except where the Trustee has appointed a Custodian in accordance with clause 14.3 and as may be otherwise permitted by Superannuation Law, the Trustee must hold all investments of the assets of the Fund in its name.

### **13. Trustee**

13.1. The Trustee of the Fund must be either:

- 13.1.1. at least two individual trustees; or
- 13.1.2. a Constitutional Corporation,

PROVIDED ALWAYS that the Trustee shall not be a disqualified person under Superannuation Law and FURTHER that the appointment of a Trustee shall not compromise the status of the Fund as a self managed superannuation fund.

13.2. Subject to Superannuation Law, a Trustee shall cease to be a Trustee:

- 13.2.1. when the Trustee concerned, by notice in writing served on the Members, resigns as a Trustee of the Fund;
- 13.2.2. upon the Trustee concerned becoming a disqualified person under Superannuation Law;
- 13.2.3. subject to 13.8 hereof and Superannuation Law, when at least 75% of the Members, by notice in writing served on the Trustee concerned, remove the Trustee concerned as the or a trustee of the Fund; or
- 13.2.4. subject to 13.5.1(a) or 13.5.1(b) or 13.5.1(c) hereof or 13.7.1(a) or 13.7.1(b) or 13.7.1(c) hereof, as applicable, if the Trustee concerned being a natural person is under a legal disability or dies; or

- 13.2.5. if the Trustee concerned being a natural person is or becomes an insolvent under administration (within the meaning of Section 9 of the *Corporations Act 2001*).
- 13.3. Except in the circumstances applicable under sub-clause 13.10 hereof, where a person has ceased to be an individual Trustee of the Fund or where the Trustee is a Constitutional Corporation and a person has ceased to be a director of that corporation, the Trustee shall take such steps as are necessary to remove such person from membership of the Fund, if required under Superannuation Law.
- 13.4. Where the Trustee has approved the admission of a person as a Member of the Fund, the Trustee shall, subject to paragraphs 13.5 and 13.6 hereof and subject to Superannuation Law, take such steps as are necessary to appoint such person as a Trustee of the Fund or, where the Trustee is a Constitutional Corporation, to appoint such person as a director of that corporation with effect from the date of such person's admission to membership of the Fund.
- 13.5. If a Member of the Fund is under a legal disability, then subject to Superannuation Law:
- 13.5.1. if the Fund has individuals as Trustees, then the following individual(s) shall become replacement Trustee(s) of the Fund in place of the incapacitated Member during any period when such Member is under a legal disability:
- (a) the legal personal representative(s) of such Member and, if appointed under an enduring power of attorney of such Member, then in accordance with such enduring power of attorney and if the Superannuation Law does not permit more than one individual to so act, then specifically, any one of them as they may in writing agree upon or failing such agreement then the one of them, successively in order of age, who is then able to so act), subject to such legal personal representative(s) consenting to so act; OR
  - (b) if the Member has made a nomination of his/her successor trustee then, subject to Superannuation Law, such nominated individual(s), subject to the nominated trustee(s) consenting to so act; OR
  - (c) otherwise such other individual(s) as are permitted to so act under Superannuation Law, subject to such individual(s) consenting to so act.
- 13.5.2. if the Trustee of the Fund is a Constitutional Corporation, then the following individual(s) shall become replacement director(s) and, if applicable, secretary(ies) of that Constitutional Corporation in place of the incapacitated Member during any period when such Member is under a legal disability subject to such appointment(s) and the associated removal of the incapacitated Member being in accordance with the Constitution or Articles of Association of such Constitutional Corporation:
- (a) legal personal representative(s) of such Member and, if appointed under an enduring power of attorney of such Member, then in accordance with such enduring power of attorney and if the Superannuation Law does not permit more than one individual to so act, then specifically, any one of them as they may in writing agree upon, or, failing such agreement, then the one of them, successively in order of age, who is then able to so act), subject to such legal personal representative(s) consenting to so act; OR

- (b) if the Member has made a nomination of his/her successor director (and, if the Member is also a/the secretary of that Constitutional Corporation, has also made a nomination of his/her successor secretary, if applicable) then, subject to Superannuation Law, such nominated director(s) and, if applicable, such nominated secretary(ies), subject to such nominated director(s)/nominated secretary(ies) consenting to so act; OR
  - (c) otherwise such other individual(s) as are permitted to so act under Superannuation Law, subject to such individual(s) consenting to so act.
- 13.6. If a Member of the Fund is under a legal disability because of age and does not have a legal personal representative, the parent or guardian of the Member may act as a Trustee of the Fund or as a director of any Constitutional Corporation which acts as the Trustee of the Fund in place of the Member.
- 13.7. If a Member of the Fund dies, then subject to Superannuation Law:
- 13.7.1. if the Fund has individuals as Trustees, then the following individual(s) shall become replacement trustee(s) of the Fund during the period commencing on the date of the death of the Member concerned and ending when the deceased Member's Death Benefit commences to be paid:
    - (a) the legal personal representative(s) of such deceased Member (without the need to obtain a Grant of Probate in relation thereto if the Member dies with a last Will and Testament in place) and if Superannuation Law does not permit more than one individual to so act, then specifically, any one of them as they may in writing agree upon or failing such agreement then the one of them, successively in order of age, who is then able to so act) subject to such legal personal representative(s) consenting to so act; OR
    - (b) if the deceased Member has made a nomination of his/her successor trustee(s) then, subject to Superannuation Law, such nominated individual(s), subject to the nominated trustee(s) consenting to so act; OR
    - (c) otherwise such other individual(s) as are permitted to so act under Superannuation Law, subject to such individual(s) consenting to so act
- During the period:
- (d) beginning when the deceased Member died; and
  - (e) ending when the deceased Member's Death Benefit commenced to be payable; or
- 13.7.2. if the Trustee of the Fund is a Constitutional Corporation then the following individual(s) shall become replacement director(s) and, if applicable, secretary(ies) of that Constitutional Corporation in place of the deceased Member, during the period commencing on the date of the death of the Member concerned and ending when the deceased Member's Death Benefit commences to be paid, subject to such appointment(s) and the associated removal of the deceased Member being in accordance with the Constitution or Articles of Association of such Constitutional Corporation:
    - (a) the legal personal representative(s) of such deceased Member (without the need to obtain a Grant of Probate in relation thereto if the Member

dies with a last Will and Testament in place) and if Superannuation Law does not permit more than one individual to so act, then specifically, any one of them as they may in writing agree upon, or, failing such agreement, then the one of them, successively in the order of age, who is then able to so act) subject to such legal personal representative(s) consenting to so act; OR

- (b) if the deceased Member has made a nomination of his/her successor director (and, if the deceased Member was also a/the secretary of that Constitutional Corporation, has also made a nomination of his/her successor secretary, if applicable) then, subject to Superannuation Law, such nominated individual(s) (and, if applicable, such nominated secretary(ies)), subject to such nominated director(s)/nominated secretary(ies) consenting to so act; OR
- (c) otherwise such other individual(s) as are permitted to so act under Superannuation Law, subject to such individual(s) consenting to so act during the period:
  - (i) beginning when the deceased Member died; and
  - (ii) ending when the deceased Member's Death Benefit commenced to be payable.

13.8. Subject to Superannuation Law and to 13.2.3 and 13.2.4 hereof, the Members may by written notice appoint a new or additional Trustee PROVIDED THAT the appointment complies with Superannuation Law and if a Trustee vacates office leaving only one natural person as Trustee or no Trustee, the Member must, subject to sub-clauses 13.5, 13.6 and 13.7 hereof, appoint a new Trustee.

13.9. The Trustee is entitled to recover any costs or disbursements incurred by it in relation to the Fund PROVIDED that the Trustee shall not receive any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund unless permitted under Superannuation Law.

13.10. Any Trustee of the Fund shall have power to appoint any person(s) or entity to be an attorney of that Trustee with power to exercise all or any of the powers of discretions given to a Trustee of the Fund, upon such conditions and subject to such terms as such Trustee deems fit and such Trustee shall not be responsible for any action (whether wrongful or otherwise) on the part of such attorney(s).

13.11. In the event that more than one legal personal representative of a Member is appointed as a replacement Trustee or as a replacement Director/Secretary of a Constitutional Corporation in place of such Member pursuant to sub-clauses 13.5 or 13.7 hereof, then such legal personal representatives shall only have one (1) vote between them.

#### **14. Trustee's Powers**

14.1. In addition to the powers which it may by law have and which are otherwise granted to it by this Deed the Trustee shall have full power to administer the Fund under Superannuation Law and to ensure that the Fund is a Complying Superannuation Fund, such powers including, but not being limited to, the right:-

- 14.1.1. to commence, carry on, defend or abandon any legal proceedings relating to the Fund or to the rights of Members;



- 14.1.2. to insure or re-insure any risks, contingencies or liabilities of the Fund;
- 14.1.3. to retain the services of professional advisers, whether persons, firms or companies, in relation to the management, administration or investment of the Fund and to delegate to such professional advisers such powers as it shall see fit from time to time and to determine and pay out of the Fund the fees payable to such professional advisers;
- 14.1.4. to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- 14.1.5. to determine, authorise and arrange payment of benefits out of the Fund to persons entitled;
- 14.1.6. to deduct from any amount payable to or for a Member from the Fund such sums for income or other Taxes or duties as relate to the amounts so payable and the Trustee shall remit the said sums to the relevant authority and shall advise the Member or his Dependants or legal personal representatives as the case may be;
- 14.1.7. generally to do all acts and things as it may consider necessary or expedient for the administration, maintenance and preservation of the Fund and the performance of its obligations as Trustee of the Fund including the taking on and leasing of any equipment or machinery required for that purpose;
- 14.1.8. to operate and administer the Fund in such a way from time to time as to ensure the Fund satisfies Superannuation Law;
- 14.1.9. to pay a Member's or a beneficiary's benefits or interest in the Fund, in the circumstances prescribed by Superannuation Law, to the Commissioner for Taxation or an eligible rollover fund even if no claim for such a benefit has been made by or for the Member or beneficiary;
- 14.1.10. to determine strategies for the Fund and to determine different strategies for different portions or different Members of the Fund, to allocate assets between different portions of the Fund, to divide the Fund into sectors including sectors providing for benefits paid as pensions and benefits paid not as pensions, and to allocate assets between sectors and portions of the Fund;
- 14.1.11. to the extent permitted by Superannuation Law to borrow moneys or maintain an existing borrowing of money (including, without limitation, entering into limited recourse borrowing arrangements) from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for the purposes of acquiring an asset (other than an asset that the Trustee is prohibited by Superannuation Law from acquiring) upon such terms with or without security or interest as the Trustee deems fit and to give, or to authorise the giving of security by mortgage, charge/security interest (whether fixed or floating/specific or general) or otherwise over the asset.
- 14.1.12. to the extent permitted by Superannuation Law (subject always to the restrictions contained therein) to borrow or raise any financial accommodation and to assign, pledge, mortgage or charge any asset of the Fund as security for any such borrowings or financial accommodation;
- 14.1.13. to indemnify or undertake to indemnify any person company government or institution in respect of any claim matter or thing relating to the Fund or the

rights of Members, former Members or other persons entitled in respect of the Fund;

- 14.1.14. to utilise such other powers as are appropriate to the fulfilment of the purposes of the Fund, its proper and efficient management and its compliance with any exercise of powers authorities and discretions available under Superannuation Law;
  - 14.1.15. to open any account or accounts with any financial institution and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument;
  - 14.1.16. generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee hereof or any person being a director or shareholder of a corporate Trustee hereof has or may have a direct or personal interest (whether as trustee or any other settlement or in his or her person capacity or a shareholder or director or member or partner of any company or partnership or as a unit holder in any Unit Trust or as a beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee hereof for the time being is the sole Trustee hereof.
- 14.2. The Trustee shall not be bound to act personally but may employ a solicitor accountant or any other agent to transact all or any business of whatsoever nature required to be done in connection with the Fund (including the receipt and payment of money) and shall be entitled to be allowed and to be paid all charges and expenses so incurred.
  - 14.3. The Trustee may appoint a Custodian to hold on its behalf the title to some or all of the securities policies or other assets in which the Fund is for the time being invested and the Custodian shall at all times act in accordance with the instructions given by the Trustee either generally or in relation to specific transactions. The Trustee may pay to the Custodian out of the Fund such remuneration for its services as the Trustee from time to time determines. The Trustee may by giving notice to the Custodian terminate its appointment and may appoint another corporate body to act as Custodian. The Trustee shall ensure that the Custodian observes all the provisions of this Deed applicable to the Trustee.
  - 14.4. In the exercise of the powers authorities and discretions vested in it by this Deed the Trustee shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers, authorities or discretions from time to time and at any time or may refrain from exercising all or any of those powers, authorities or discretions from time to time or at all and its decisions as to the interpretation and effect of this Deed shall be final.
  - 14.5. The Trustee may treat an authorisation purported to be given by a Member as given by the Member.
  - 14.6. The Trustee must ensure that moneys are available to pay income and other Taxes or duties imposed on the Fund and for this purpose the Trustee has power to retain or delay payment of moneys otherwise currently payable under this Deed whether on a Member's termination of Service or death or as a result of the discontinuance of the Fund or otherwise.

14.7. The Trustee is not to be taken to be in contravention of the Deed or in breach of trust if in giving effect to the above paragraphs it:-

14.7.1. construes or interprets this Deed;

14.7.2. does such acts or things;

14.7.3. omit to do such acts or things;

which might otherwise be in contravention of this Deed or in breach of trust but which the Trustee considers necessary, desirable or expedient to avoid a contravention of Superannuation Law.

14.8. The Trustee is not to be taken to be in contravention of this Deed or in breach of trust if it does anything or omits to do anything which is in contravention of Superannuation Law if:-

14.8.1. the Trustee rectifies the contravention within the period allowed by Superannuation Law or within the further period as the Commissioner allows; or

14.8.2. the Commissioner notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

14.9. The Trustee may in its discretion effect or take out insurance against:

14.9.1. (a) any liability which arises against the Trustee; or

(b) any liability which arises against the Fund; and

14.9.2. any losses or damages which the Fund or a director of the Trustee may suffer or incur as a result of or arising from any act or omission of the Trustee or any person to whom the Trustee may have delegated its powers duties and discretions or any servant, agent or employee of the Trustee or any contractor (including persons acting in any professional role), custodian or other person or body engaged by the Trustee for the purposes of the Fund.

14.10. The Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.

## **15. Trustee to be Indemnified**

15.1. Subject to Superannuation Law and to paragraph 15.2, the Trustee and if it is a Constitutional Corporation its directors shall be indemnified by the Fund out of the assets of the Fund in respect of any liability incurred in connection with any act done or omitted in good faith in the administration of the Fund or while acting as trustee of the Fund and shall have a lien on and may use any moneys for the time being in the hands of the Trustee for the indemnity and generally for the payment of all proper legal and other costs charges and expenses of administering or winding up the Fund and otherwise performing its duties under this Deed.

15.2. The Trustee and if it is a Constitutional Corporation its directors shall not be entitled to any indemnity against:-

15.2.1. liability for breach of trust if the Trustee or the directors:-

(a) fail to act honestly in a matter concerning the Fund; or

- (b) intentionally or recklessly fail to exercise in a matter affecting the Fund, the degree of care and diligence that the Trustee or the directors were required to exercise; or

15.2.2. liability for a monetary penalty under a civil penalty order.

15.3. The indemnity hereby provided shall apply to any payment made on the death of a Member to any person whom the Trustee bona fide believes to be entitled.

## **16. Trustee's Duties**

The Trustee covenants it will:-

- 16.1. act honestly in all matters concerning the Fund;
- 16.2. exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- 16.3. ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- 16.4. keep the money and other assets of the Fund separate from any money and assets, respectively:-
  - 16.4.1. that are held by the Trustee personally; or
  - 16.4.2. that are money or assets, as the case may be, of an Employer, or an associate of an Employer;
- 16.5. not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- 16.6. formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:-
  - 16.6.1. the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - 16.6.2. the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - 16.6.3. the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - 16.6.4. the ability of the Fund to discharge its existing and prospective liabilities.
- 16.7. if there are any reserves of the Fund - formulate and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- 16.8. allow a Member access to any prescribed information or prescribed documents under Superannuation Law;

- 16.9. except where permitted by Superannuation Law, not recognise or in any way encourage or sanction a charge over a Member's benefits;
- 16.10. except where permitted by Superannuation Law, the Trustee shall not give a charge over or in relation to an asset of the Fund.

## **17. Amendment of Deed**

- 17.1. Subject to Superannuation Law, this Deed, including this clause, may be added to, repealed, amended or altered in any respect by the Trustee by deed or by resolution of the Trustee ("**Amendment**").
- 17.2. Any Amendment may be with immediate, delayed or (to the extent permitted by Superannuation Law) retrospective effect.
- 17.3. If required by Superannuation Law, the Trustee must promptly notify each Member of the nature and purpose of any Amendment and of the effect (if any) which the Amendment has on the Member's entitlements under the Deed.

## **18. Termination of the Fund**

- 18.1. If:-
  - 18.1.1. there are no Members in the Fund and the trustee resolves to terminate the Fund; or
  - 18.1.2. for any reason the Principal decides to terminate the Fund; or
  - 18.1.3. the Trustee gives a written notice to all Members requiring the termination of the Fund; or
  - 18.1.4. Superannuation Law require the Fund to be terminated;the Trustee must either initiate winding-up proceedings in accordance with Superannuation Law or, as an alternative, obtain a written recommendation of the Funds actuary, forward it to the Commissioner for approval within the time required by Superannuation Law. If the Commissioner approves the recommendation, the Trustee must follow the specified course of action recommended.
- 18.2. If on termination of the Fund there is no Member or if after the payment of amounts to Members or their Dependants or legal personal representatives a surplus remains in the Fund, the surplus shall, subject to Superannuation Law, be divided among and be paid to or for the benefit of:-
  - 18.2.1. any Members;
  - 18.2.2. any former Members;
  - 18.2.3. any Dependants of any Members or former Members;
  - 18.2.4. the legal personal representatives (in their capacities as such) of any Members, former Members or Dependants; or
  - 18.2.5. any Employer or former Employer who has contributed;as the Trustee in its absolute discretion determines and, if provided to or for two or more persons, in such proportions as the Trustee in its absolute discretion determines.

## 19. Proper Law

This Deed will be governed and construed and will take effect in accordance with the laws of South Australia. Employers, Trustees, Members and former Members and their Dependants and legal personal representatives must accept the jurisdiction of the Courts of that State. Sections 14, 14A, 14B and 35B of the *Trustee Act 1936* (South Australia) have no application to this Deed.

## 20. Superannuation Law

### 20.1. Power to Comply with Superannuation Law

Notwithstanding any other provision of this Deed and in addition to the powers and discretions conferred upon the Trustee by this Deed, the Trustee will be empowered but not, except as provided in this Deed, required to do or procure to be done or refrained from doing such acts matters and things as in the opinion of the Trustee may be necessary or desirable:

20.1.1. to enable the Fund to become, and continue to be a Complying Superannuation Fund; and

20.1.2. in order to comply with or satisfy any provision or requirement of Superannuation Law or of the Commissioner.

### 20.2. Deemed Inclusion of Superannuation Law

Notwithstanding any other provision of this Deed, all provisions of Superannuation Law (if any) that must be included in this Deed from time to time in order for the Fund to be a Complying Superannuation Fund in any year of income are deemed to be included in this Deed, but only for so long as that deemed inclusion is necessary for the Fund to be a Complying Superannuation Fund. If there is any inconsistency between any provision deemed to be included in this Deed pursuant to this sub-clause 20.2 (“**deemed provision**”) and any other provision of this Deed, the deemed provision must prevail and that other provisions of this Deed will be deemed to be modified to the extent of the inconsistency.

## 21. Miscellaneous

21.1. Notice may be given by the Trustee to a Member either personally or by sending the same by prepaid letter posted to his address last known to the Trustee or to an Employer or by being enclosed in the Member's pay envelope or advice.

21.2. This Deed is governed by the law of South Australia and the Trustee and Members accept the exclusive jurisdiction of the Courts of South Australia.