



MINTER ELLISON NORTHMORE HALE

LAWYERS

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ADRIAAN VAN DER GIEZEN and DELYS ARNA VAN DER GIEZEN  
( 'Trustee' )

A & D VAN DER GIEZEN SUPERANNUATION FUND

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**Accountant's  
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ASSOCIATED OFFICES SYDNEY MELBOURNE BRISBANE CANBERRA GOLD COAST ADELAIDE  
AUCKLAND WELLINGTON LONDON HONG KONG BEIJING JAKARTA SINGAPORE

DEED dated

19 JUNE

1995

BETWEEN ADRIAAN VAN DER GIEZEN and DELYS ARNA VAN DER GIEZEN both of  
4 Serena Street, Falcon ('Trustee')

#### RECITALS

- A. The Trustees wish to establish a superannuation fund for the benefit of those people who become Members of the Fund, on the terms and conditions set out in this Deed.
- B. The Trustees have agreed to act as the trustees of the Fund.

#### AGREEMENT

##### 1.0 INTERPRETATION

##### 1.1 Definitions

Unless the context otherwise requires:

'Act' means, as the context requires, any one or more of the *Superannuation Industry (Supervision) Act 1993*, the *Income Tax Assessment Act 1936*, the *Occupational Superannuation Standards Act 1987* and any regulations made pursuant to any of those Acts;

'Annuity' means an annuity which is an eligible annuity for the purposes of the Act;

'Auditor' means the auditor for the time being appointed pursuant to this Deed;

'Commissioner' means, as the context requires, the Commissioner of Taxation or the Insurance and Superannuation Commissioner or any other regulatory body which has responsibility for the administration of occupational superannuation from time to time;

'Deed' means this deed including the Schedule, as amended from time to time;

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

- (a) the Spouse of the Member or former Member;
- (b) any child, step-child or adopted child of the Member or former Member including any such child born after the death of the Member and any person who, in the opinion of the Trustees, is or was actually maintained by the Member or former Member as his child; or

(c) any other person who, in the opinion of the Trustees, was substantially financially dependent on the Member or former Member at the relevant time;

'Employee' means a person in the employment of an Employer and includes a director of that Employer and any other person declared by the Employer to be an Employee;

'Employer' means a person or company by whom a Member is employed, and in relation to a particular Member means the Employer of that Member;

'Employer Contribution Account' means, in relation to a Member, the Employer Contribution Account kept in relation to the Member pursuant to clause 7.1(b)(i);

'Employer Representative' means a person nominated by the Employer;

'Fund' means all of the assets from time to time held by the Trustees on the trusts of this Deed;

'Fund Earning Rate' means the Fund Earning Rate referred to in clause 28.7;

'Fund Reserve Account' means the Fund Reserve Account referred to in clause 7.1(a);

'Fund Year' means a period of 12 months ending on the 30 June, or such other period ending on such other date as the Trustees from time to time may determine;

'Investment Fluctuation Account' means the Investment Fluctuation Account referred to in clause 7.4;

'Investment Income' means the Investment Income determined in accordance with clause 28.1;

'Member' means a person who has been accepted by the Trustees as a Member of the Fund and who has not ceased to be a Member;

'Member Accounts' means, in relation to a Member, the Member's Employer Contribution Account and Member Contribution Account and any other accounts established pursuant to clause 7.6 which the Trustees decide are Member Accounts;

'Member Contribution Account' means, in relation to a Member, the Member Contribution Account (if any) kept in relation to the Member pursuant to clause 7.1(b)(ii);

'Member Representative' means a person nominated by the Members or by a trade union or other organisation representing the interests of the Members;

'Nominated Dependant' means a Dependant nominated by a Member as the Nominated Dependant;

'Nominated Relative' means a Relative nominated by a Member as the Nominated Relative;

'Plan Credit' means, in respect of a Member, the aggregate of the total amounts standing to the credit of the Member's Member Accounts;

'Policy' means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member 'Policy' means the particular assurance on the life of the Member or former Member) and includes any policy covering any two or more of those risks;

'Relative' in relation to a Member or former Member means:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, cousin, grandchild or great-grandchild of the Member;
- (b) any Spouse of any of the persons specified in paragraph (a);
- (c) any child of any of the persons specified in paragraph (a) or (b); or
- (d) any other natural person who has been selected by the Trustees to whom the Trustees consider it appropriate to pay a benefit in respect of the Member;

'Relevant Law' means the Act, as modified in its application to the Fund by any subsisting declaration, modification or exemption granted by the Commissioner and, where the Trustees deem appropriate:

- (a) any announcement of a proposed change to the Act whether or not the change is to have retrospective effect;
- (b) any circular guideline ruling announcement or advice given by the Commissioner,

where the Trustees consider that observance of or compliance with any such announcement circular guideline ruling or advice will either:

- (c) be a prerequisite for or in any way assist the Fund to be a Superannuation Fund in relation to each year of income; or
- (d) be necessary to ensure that the Trustees do not breach the Act;

'Retirement Date' means, in relation to a Member, the Member's 65th birthday;

'Review Date' means a date on which the Trustees determine the Investment Income of the Fund pursuant to clause 28;

'Rollover Payment' means any payment made by the Trustees at the request of a Member or former Member or in other circumstances allowed under the Act or acceptable to the Commissioner to any one or more of the following:

- (a) the trustee of an approved deposit fund;

- (b) the trustee of a Superannuation Fund;
- (c) the trustee of an eligible rollover fund; or
- (d) the issuer of an Annuity;

'Spouse' of a person means:

- (a) a person legally married to the person at any time; or
- (b) a person who, although not legally married to the person, in the opinion of the Trustees lives or lived with the person on a bona fide domestic basis as the husband or wife of the person,

but where a person has more than one Spouse the Trustees must determine which one or more of them will be deemed to be that person's spouse;

'Superannuation Fund' means a superannuation fund which, in the opinion of the trustees of the fund, in the relevant year of income, will be a 'complying superannuation fund' for the purposes of the Act;

'Taxation' includes income tax (including capital gains tax, tax on eligible termination payments and tax on contributions) payroll tax, land tax, stamp duty and any other taxes or duties; and

'Trustees' means the Trustees for the time being of the Fund whether original additional or substituted.

## 1.2 Interpretation

Reference to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and vice versa;
- (c) a person includes a body corporate;
- (d) a statute, regulation or provision of a statute or regulation ('Statutory Provision') will be construed as a reference to that Statutory Provision as amended or re-enacted from time to time and includes any statute, regulation or provision enacted in replacement of that Statutory Provision;
- (e) a clause or schedule is a reference to a clause or schedule of this Deed (unless the context otherwise requires),

and headings are for convenience only and do not affect the interpretation of this Deed.

## 1.3 Severance

If:

- (a) any provision of this Deed is void or voidable or unenforceable in accordance with its terms, but would not

be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly;

(b) notwithstanding paragraph (a), a provision of this Deed would still be void, voidable, unenforceable or illegal:

- (i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and
- (ii) in any other case, the whole provision must be severed,

and the remainder of this Deed will be of full force or effect.

#### 1.4 **Words and Expressions Defined in Act**

Unless the context indicates a contrary intention, words and expressions used in this Deed will have the meanings assigned to them in the Act.

#### 2.0 **THE FUND**

##### 2.1 **Establishment**

By this Deed, the Trustees establish the A & D Van Der Giezen Superannuation Fund.

##### 2.2 **Fund Vested in Trustees**

The Fund will be vested in the Trustees and will at all times be held controlled and managed by the Trustees subject to the trusts powers and provisions of this Deed.

#### 3.0 **MEMBERSHIP OF THE FUND**

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

Any person selected by the Trustees who, if required by the Trustees, has lodged with the Trustees an application for membership in such form as the Trustees may determine, may be admitted to membership of the Fund by the Trustees.

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

When the Trustees admit a person to membership of the Fund, the person will become a Member and will be bound by this Deed.

##### 3.3 **Special Conditions of Membership**

The terms and conditions applicable to a Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member, may be varied by written agreement between the Trustees and the Member.

**3.4 Information to be Given to New Members**

As soon as practicable after the admission of a person as a Member of the Fund the Trustees will give to that Member any information required by Relevant Law.

**3.5 Provision of Information**

Every Member and any person who may become entitled to be paid a benefit from the Fund when requested by the Trustees must furnish such information as the Trustees deem necessary for the purposes of any investigation or otherwise in connection with the Fund. Every Member must submit to medical examinations as required by the Trustees by a registered medical practitioner nominated by the Trustees.

**3.6 Failure to Comply**

If a Member or any other person who becomes entitled to be paid a benefit from the Fund fails to comply with the provisions of clause 3.5 the Trustees may suspend the payment of any contributions in respect of that Member or withhold any benefit in respect of that Member or person until the Member or other person does comply.

**3.7 Incorrect or Misleading Information**

Where a Member or any other person who becomes entitled to be paid a benefit from the Fund furnishes information required pursuant to this Deed which affects or is likely to affect the benefits payable to or in respect of the Member or person and the information supplied is incorrect or misleading or any relevant information is deliberately withheld, the Trustees may in their absolute discretion alter those benefits in such manner as the Trustees consider appropriate.

**4.0 CONTRIBUTIONS TO THE FUND**

**4.1 Employer Contributions**

Subject to the other provisions of this Deed, a Member's Employer may contribute to the Fund in respect of those of its Employees who are Members such amounts as may be agreed from time to time between the Trustee and the Member. The Employer may make additional contributions in respect of any Member at any time. If the Employer is a company, its contributions may be paid on its behalf by another company in any group of companies to which it belongs.

**4.2 Member Contributions**

Subject to the other provisions of this Deed, each Member may contribute to the Fund such amount (if any) as that Member determines from time to time.

**4.3 Payment of Contributions**

Contributions will be paid at the times and in the manner determined by the Trustees, subject to any requirements of Relevant Law.

#### 4.4 Acceptance of Contributions

The Trustees:

- (a) may accept contributions from any person in respect of a Member to the extent permitted by Relevant Law;
- (b) must not accept any contribution if, in the opinion of the Trustees, the acceptance of the contribution would not be permitted by Relevant Law.

#### 4.5 Termination, Reduction or Suspension of Contributions

Notwithstanding anything contained in this Deed to the contrary:

- (a) an Employer may from time to time terminate its contributions to the Fund in respect of all or any Members employed by the Employer by giving the Trustees one month's notice in writing of the Employer's intention so to do and upon the expiration of the period stipulated in the notice the liability of that Employer to contribute in respect of those Members will cease and determine except in respect of payments due on or before the date of the expiration of such notice; and
- (b) an Employer may from time to time reduce or suspend all or any part of its contributions to the Fund in respect of all or any Members employed by the Employer by giving the Trustees one month's notice in writing of the Employer's intention so to do and upon the expiration of the period stipulated in that notice the liability of the Employer to contribute in respect of those Members will cease to the extent or for the period mentioned in that notice except in respect of payments due on or before the date of the expiration of such notice,

but upon an Employer giving notice in writing to the Trustees that the Employer intends to terminate or to reduce or suspend the Employer's contributions pursuant to this clause, the Trustees must immediately notify the affected Members and:

- (c) the affected Members may, to the extent and in the manner determined by the Trustees, terminate, reduce or suspend their own contributions to the Fund; and
- (d) whether or not the affected Members terminate, reduce or suspend their own contributions to the Fund, the Trustees may adjust the benefits of those Members on such basis as the Trustees consider equitable.

#### 4.6 Form of Contributions

Subject to any restrictions imposed by Relevant Law, contributions may be made either in cash or by transfer to the Trustees of an asset in specie. If a contribution is made by the transfer of an asset to the Trustees, 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 Trustees.



5.0 **TRANSFERS TO OTHER FUNDS**

5.1 **Transfers to Other Funds**

Without in any way affecting any other provision of this Deed giving the Trustees power to transfer a Member's interest in the Fund to another superannuation arrangement or otherwise deal with the Member's interest in the Fund, but subject to any requirements of Relevant Law:

- (a) where a Member joins or is eligible to join a Superannuation Fund ('Other Fund'); and
- (b) the Member requests that the Member's interest in the Fund be transferred to the Other Fund,

the Trustees may, subject to such conditions and indemnities as the Trustees may require, pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to such amount ('Transferred Amount') as determined by the Trustees which amount represents the Member's interest in the Fund.

5.2 **Benefits Cease**

The Member's Member Accounts will then be debited with an amount equal to the Transferred Amount in such proportions as the Trustees consider appropriate and the receipt of the Transferred Amount by the trustee of the Other Fund will be a complete discharge to the Trustees of all liabilities in respect of, and the Trustees will have no responsibility to see to the application of, the Transferred Amount. If, after the payment of the Transferred Amount to the trustee of the Other Fund, there are any amounts standing to the credit of the Member's Member Accounts, the Member will forfeit those amounts, which will be dealt with as forfeited benefits in accordance with clause 11.

6.0 **TRANSFERS FROM OTHER FUNDS**

Where a Member is or was a member of or is or was a beneficiary under any other superannuation arrangement, approved deposit fund, eligible rollover fund or Annuity, the Trustees may receive from the trustee of the other superannuation arrangement, approved deposit fund or eligible rollover fund or from the issuer of the Annuity money or assets in respect of the Member's interest in the superannuation arrangement, approved deposit fund, eligible rollover fund or Annuity. The Trustees will hold the money or assets received as part of the Fund subject to any requirements of Relevant Law and will credit the particular Member's Member Accounts in the manner agreed between the Trustees and the Member to take account of the money or assets received.

7.0 **FUND ACCOUNTS**

7.1 **Fund Accounts**

The Trustees will keep the following Accounts for the purpose of administering the Fund and in particular, for the purpose of calculating the benefits payable from the Fund:

- (a) a Fund Reserve Account;
- (b) the following Member Accounts in respect of each Member:
  - (i) an Employer Contribution Account, to which contributions made in respect of a Member pursuant to clause 4.1 will be credited; and
  - (ii) a Member Contribution Account to which contributions made by the member pursuant to clause 4.2 will be credited.

#### 7.2 **Crediting of Member Accounts**

In addition to any amounts to be credited to the Member Account pursuant to clause 7.1, each of a Member's Member Accounts will, subject to any restrictions imposed by Relevant Law, be credited with:

- (a) such portion of the Investment Income of the Fund (if positive) as the Trustees determine will be credited to the Member Account in accordance with clause 28.6; and
- (b) any other amounts which the Trustees with the consent of the Member determine will be credited to the Member Account.

#### 7.3 **Debiting of Member Accounts**

Each of a Member's Member Accounts will, subject to any restrictions imposed by Relevant Law, be debited with:

- (a) such portion of the Investment Income of the Fund (if negative), as the Trustees determine will be debited to the Member Account in accordance with clause 28.6;
- (b) the amount of any tax liability which in the opinion of the Trustees will be incurred by virtue of the Fund's acceptance of any contributions which are to be credited to the Member Account; and
- (c) any other amounts which the Trustees with the consent of the Member determine will be debited to the Member Account.

#### 7.4 **Investment Fluctuation Account**

The Trustees may establish an Investment Fluctuation Account for the purposes described in clause 28.2. If at any time the Trustees consider that the amount standing to the credit of the Investment Fluctuation Account exceeds such amount as is likely to ever be required for the purposes described in clause 28.2, the Trustees may debit such excess amount from the Investment Fluctuation Account and credit the Member Accounts of all Members and the Fund Reserve Account with such proportions of the excess amount as the Trustees may decide.

#### 7.5 **Fund Reserve Account**

The amount standing to the credit of the Fund Reserve Account at any time will be equal to the value of the Fund less the sum of the amounts credited to the Investment Fluctuation Account, the Member

Accounts of all Members and any other accounts which may be established pursuant to clause 7.6. The Trustees will from time to time, in accordance with Relevant Law, apply the whole or any part of the amount standing to the credit of the Fund Reserve Account in such manner as the Trustees may determine and Relevant Law allows.

**7.6 Additional Accounts**

In addition to the accounts mentioned in clause 7.1 to 7.5 (inclusive), the Trustees may establish and maintain such other accounts as the Trustees deem appropriate.

**8.0 BENEFITS**

**8.1 Benefits**

Subject to the provisions of this Deed, a lump sum benefit equal to the Member's Plan Credit will become payable in respect of a Member if:

- (a) the Member retires from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the retirement occurred before or after the Member joined the Fund);
- (b) the Member requests payment of his or her benefit after the Member's Retirement Date;
- (c) if an Employer has, at any time, contributed to the Fund in respect of the Member, the Member ceased to be employed by the Employer;
- (d) the Member ceases to work for gain or reward in any business, trade, profession, vocation, calling, occupation or employment on account of the Member's ill-health (whether physical or mental);
- (e) the Member dies; or
- (f) Relevant Law otherwise requires or permits the Member's benefit to be cashed.

**8.2 Continuity of Employment**

If a Member within 90 days or such longer period as the Trustees may determine after ceasing to be employed by an Employer ('first Employer') commences to be employed by another Employer, he will not be entitled to be paid a benefit in respect of his ceasing to be employed by the first Employer.

**9.0 PAYMENT OF BENEFITS**

**9.1 Method of Payment**

- (a) The Trustees may pay a benefit by forwarding a cheque to the postal address last notified of the person to whom the benefit is payable or paying the benefit directly to a bank or other account nominated by the person or in such other manner as the Trustees determine.

- (b) All benefits will be expressed and paid in Australian currency unless otherwise specifically agreed between the Member and the Trustees.

## 9.2 Receipt for Benefits

Any person to whom a benefit is payable must if requested furnish the Trustees with a receipt and release in the form from time to time required by the Trustees.

## 9.3 Tax on Benefits

The Trustees may deduct from any benefit payable pursuant to this Deed any Taxation.

## 9.4 Pensions and Annuities

Notwithstanding anything to the contrary in this Deed, the primary purpose of the Fund is to provide to each Member or his or her Dependants an Old-age Pension, and any benefit payable from the Fund may only be paid by the Trustees in a way that is consistent with that purpose. Without limiting the generality of this clause:

- (a) a Member's benefit must be paid by the Trustees by way of a pension unless the Member requests the Trustees to pay some or all of that Member's benefit as a lump sum;
- (b) a request under paragraph (a) must be made in writing and must be received by the Trustees within 30 days from the date on which that Member's entitlement arose or such longer period as the Trustees may in their absolute discretion determine;
- (c) a benefit or a part of it paid by way of a pension will be paid either by the Trustees applying the relevant proportion of the benefit in the purchase of an annuity (as defined in the Act) for the Member in such manner and on such conditions as the Trustees in their absolute discretion determine or, with the consent of the Employer, by paying the relevant proportion of the benefit as a pension of such amount and on such conditions as the Trustees and the recipient of the pension agree; and
- (d) if the recipient elects that the pension is to be a pension for the purposes of Relevant Law and that it is to comply with certain minimum standards prescribed by Relevant Law, the agreement between the Trustees and the recipient must include the requirements that ensure both that it is a pension of that type and that it complies with those standards, and this Deed will be deemed to include in it those requirements and those standards but only to the extent that the Deed relates to that pension.

## 9.5 Payment of Benefits on Death

Where any benefit becomes payable to or in respect of a Member pursuant to this Deed and the Member is not alive when the benefit is to be paid, the Trustees may pay or apply the benefit to or for the benefit of such one or more as determined by the Trustees in their absolute discretion of the Nominated Dependants and/or any

other Dependants of the former Member and/or the Legal Personal Representative of the Member in the manner at the times by the instalments and in such proportions between them (if more than one) as the Trustees may from time to time in their discretion determine. If the Member left no Nominated Dependants or other Dependants and there is no Legal Personal Representative of the Member, the Trustees may pay such portion of the benefit as may be allowed under Relevant Law to the Nominated Relative and/or any other Relative of the Member as determined by the Trustees in their absolute discretion. Any portion of the benefit which is not applied in accordance with this clause will be absolutely forfeited and will remain in the Fund to be dealt with in accordance with clause 11.4.

**9.6 Payment to Others on Behalf of Beneficiaries**

When any person to whom a benefit becomes payable is under the age of 18 years or when in the opinion of the Trustees it would be in the best interests of that person, the Trustees may retain the benefit in the Fund until the Trustees are satisfied that it should be paid to the person or pay all or part of any benefit to any other person for application on behalf of that person and the receipt of the person to whom the benefit is paid will be a complete discharge to the Trustees for the payment in respect of the person. The Trustees will not be bound or concerned to see to the application of the benefit so paid.

**9.7 Benefit Payment Restrictions**

Benefits payable to or in respect of a Member may only be paid to the Member in cash to the extent permitted by Relevant Law.

**9.8 Preserved Benefits**

Any benefits which have become payable to a Member but which are unable to be paid to the Member in cash may, at the discretion of the Trustees, be dealt with in accordance with clause 5.1 or clause 9.11 or retained in the Fund.

**9.9 Retention of Benefit in the Fund**

At the request of a Member or any other person who becomes entitled to be paid a benefit from the Fund, the Trustees may at their absolute discretion but subject to the requirements of Relevant Law, retain all or part of the benefit in the Fund until:

- (a) the Member or person entitled requests that it be paid to him;
- (b) the Member dies; or
- (c) the Trustees elect for whatever reason to pay the benefit to the Member or the person entitled thereto,

whichever first occurs.

**9.10 Interest on Benefits**

If any benefit, including any amount referred to in clause 33, is retained in the Fund, the Trustees may in their absolute discretion

increase the benefit by an amount of interest calculated at the Fund Earning Rate in respect of the period from the date on which the benefit became payable until the date on which the benefit is paid.

**9.11 Roll Over Payments**

Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any part of any benefit payable to him from the Fund he must make a request to the Trustees in writing nominating the institution to which the payment is to be made and the amount to be applied as the Roll Over Payment. The Member or former Member must in addition complete and execute such documents as are required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner, but in circumstances provided for in the Act or otherwise acceptable to the Commissioner the Trustees may effect a Roll Over Payment in relation to a Member's benefit without the consent of the Member or former Member.

**9.12 Transfer of Policy**

Where a Member and/or any other person is entitled to be paid or the Trustees in their discretion determine to pay a benefit and where the Trustees hold a Policy of any kind in respect of the Member, the Trustees may in their absolute discretion and in lieu of surrendering the Policy assign it to the Member or other person or to such one or more of them to the exclusion of the other or others as the Trustees in their discretion may determine and the value of the Policy as at the date of assignment will be deducted from the benefit payable to the Member and/or other person and neither the Trustees nor the Employer will be liable to pay any premiums becoming due and owing under the said Policy as from the date of the assignment.

**9.13 Transfer of Investments**

The Trustees may with the consent of a Member and/or any other person to whom a benefit is payable and to the extent permitted by Relevant Law transfer investments of the Fund of equivalent value to that Member and/or other person in lieu of paying the whole or part of the amount otherwise payable.

**9.14 No Beneficial Interest**

Notwithstanding any provision of this Deed, no Member or any other person entitled to be paid a benefit from the Fund will have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while such asset or assets remain subject to the provisions of this Deed.

**9.15 Unclaimed Benefits**

The Trustees may deal with any unclaimed money in the manner specified in the Act.

**10.0 ASSIGNMENT, CHARGES AND MONEYS OWING TO THE FUND OR TO AN EMPLOYER**

**10.1 Assignments and Charges**

The Trustees must not recognise, or in any way encourage or

sanction, the assignment of or a charge over the whole or any part of a Member's Plan Credit or his or her interest in it, or a charge over the whole or any part of the Fund, except to the extent that they are permitted to do so by Relevant Law.

10.2 **Deduction from Benefit**

Subject to the requirements of Relevant Law, the Trustees may deduct from any part of a Member's Plan Credit and either themselves retain or if appropriate pay to the Employer any money owing by the Member to the Trustees or , if the Trustees are satisfied that the Employer's claim is valid, to the Employer, and pay any balance to the Member or other person to whom the benefit would but for this clause have been payable.

11.0 **FORFEITURE OF BENEFITS**

11.1 **Conditions of Forfeiture**

Subject to the requirements of Relevant Law, any Member, former Member or after his death, any of his Dependants or his legal personal representative:

- (a) who assigns or charges or attempts to assign or charge any benefit;
- (b) whose benefits whether by his own act operation of law an order of any Court or otherwise become payable to or vested in any other person, company, government or other public authority;
- (c) who becomes bankrupt or insolvent;
- (d) in the opinion of the Trustees is incapable of managing his affairs;

will:

- (e) if a benefit had become payable prior to the occurrence of any of the above events, to the extent permitted under the Act and at law generally:
  - (i) if paragraph (c) applies to a Member, forfeit entitlement to that portion of the benefit which exceeds the Member's pension reasonable benefit limit for the purpose of the Act;
  - (ii) otherwise, forfeit entitlement to all of his or her benefits and in the case of a Member he or she will cease to be a Member;
- (f) otherwise, to the extent permitted under the Act and at law generally:
  - (i) if paragraph (c) applies to a Member, forfeit entitlement to that portion of the benefit which exceeds the Member's pension reasonable benefit limit for the purpose of the Act;

- (ii) otherwise, forfeit entitlement to all of his or her benefits and in the case of a Member he or she will cease to be a Member as defined in the Act.

**11.2 Member Account Residue**

Any Member or former Member in respect of whom all benefits which the Trustees consider should be paid pursuant to the provisions of this Deed have been paid and who still has a residual amount standing to the credit of any of his Member Accounts will forfeit that amount forthwith and that amount will be dealt with as a forfeited benefit.

**11.3 Application of Certain Forfeited Benefits**

Subject to the requirements of Relevant Law, the Trustees may pay or apply the whole or any part of any benefits which have been forfeited to or for the benefit of the former Member or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustees may from time to time in their absolute discretion determine or, if the Member has died, the benefits may be applied in accordance with clause 9.5.

**11.4 Application of Remaining Forfeited Benefits**

Any forfeited benefits not dealt with in accordance with clause 11.3 will be credited to the Fund Reserve Account.

**12.0 APPOINTMENT AND REMOVAL OF TRUSTEES - NUMBER OF TRUSTEES**

12.1 There will not be less than two or more than ten Trustees unless the Trustees resolve to change the maximum or minimum number.

12.2 Subject to clause 12.3, the Trustees may resolve to increase or reduce the number of Trustees.

12.3 If clause 13.2 applies:

- (a) and an Independent Trustee is to be appointed in accordance with clause 15, the number of Trustees must be an odd number;

- (b) otherwise, the number of Trustees must be an even number,

and, if the number of Trustees determined in accordance with clause 12.2 would not otherwise comply with this clause 12.3, the number of Trustees will be deemed to have been increased by one.

**13.0 APPOINTMENT AND REMOVAL OF TRUSTEES - WHEN EQUAL REPRESENTATION RULES DO NOT APPLY**

The following provisions apply at any time when clause 14.2 does not apply and, if clause 14.2 commences to apply, pending the appointment of Trustees in accordance with clause 14.2:

- (a) the Members may by unanimous resolution:

- (i) remove any Trustee and appoint another person in that Trustee's place;



(ii) appoint any person as an additional or replacement Trustee;

(b) a Trustee will continue to hold office until he or she dies or until his or her office is vacated;

(c) the Trustees may appoint a person to act as a Trustee to fill a casual vacancy.

14.0 **APPOINTMENT AND REMOVAL OF TRUSTEES - WHEN EQUAL REPRESENTATION RULES APPLY**

14.1 If, at any time:

(a) the Fund has to comply with the 'basic equal representation rules' as prescribed by Relevant Law (or has to comply with either the 'basic equal representation rules' or an 'alternative agreed representation rule' as provided for under Relevant Law and, at the relevant time, does not comply with the relevant 'alternative agreed representation rule'); or

(b) the Trustees determine that clause 14.2 will apply,

the provisions of clause 14.2 will apply.

14.2 (a) Apart from any Independent Trustee appointed in accordance with clause 15, one-half of the total number of Trustees will be Member Representatives ('Member Representative Trustees') and one-half will be Employer Representatives ('Employer Representative Trustees'). For this purpose, the Trustees must convene a meeting to be held as soon as reasonably practicable (but, in any event, within 90 days, or such other period prescribed by Relevant Law) after the day on which this clause 14.2 commences to apply, at which meeting:

(i) the number of Trustees may be increased or reduced, as contemplated in clause 12.2;

(ii) the Trustees must adopt procedures ('Member Representative Appointment and Removal Procedures') for the appointment and removal of Member Representative Trustees in accordance with paragraph (d) of clause 14.2; and

(iii) the existing Trustees must retire and be replaced by Trustees each of whom must be either a Member Representative Trustee or an Employer Representative Trustee, as required by this clause 14.2. An existing Trustee will, notwithstanding his or her retirement pursuant to this paragraph, be eligible to be reappointed as either a Member Representative Trustee or an Employer Representative Trustee.

(b) Employer Representative Trustees may be removed or replaced at any time and for any reason by notice in writing by the Trustees.

- (c) The procedures for appointing and removing Member Representative Trustees and the term of office of those Trustees will be as specified in the Member Representative Appointment and Removal Procedures but must not be inconsistent with the requirements of Relevant Law.
- (d) The Trustees may, from time to time:
  - (i) adopt Member Representative Appointment and Removal Procedures (which may or may not be in substitution for any Member Representative Appointment and Removal Procedures previously adopted under this clause 14.2);
  - (ii) amend or revoke the Member Representative Appointment and Removal Procedures;but:
  - (iii) the Member Representative Appointment and Removal Procedures must not be inconsistent with Relevant Law; and
  - (iv) if any provision of the Member Representative Appointment and Removal Procedures is or becomes inconsistent with Relevant Law, it will be void and of no effect.

The Member Representative Appointment and Removal Procedures may deal with such matters as the term of office of Member Representative Trustees, eligibility for appointment as a Member Representative Trustee, removal of Member Representative Trustees and appointment of Member Representative Trustees, including nomination and voting procedures. For this purpose, subject to Relevant Law, the Member Representative Appointment and Removal Procedures may provide for the Fund Members to be divided into categories or electorates.

- (e) A Trustee will continue to hold office until he or she dies or until his or her office is vacated.
- (f) Any vacancy must be filled within 90 days (or such other period prescribed by Relevant Law) of the vacancy occurring.
- (g) In the event of a casual vacancy:
  - (i) in the case of an Employer Representative Trustee, the Employer may appoint any person to fill the casual vacancy; and
  - (ii) in the case of a Member Representative Trustee, the vacancy must be filled in the manner provided for in accordance with the Member Representative Appointment and Removal Procedures.

15.0 **APPOINTMENT AND REMOVAL OF TRUSTEES - INDEPENDENT TRUSTEE**

The following provisions apply at any time when clause 14.2 applies:



(a) if allowed under Relevant Law, the Trustees may, at any time, at the request of either those of the Trustees who are Member Representative Trustees or those of the Trustees who are Employer Representative Trustees appoint a person who:

- (i) is not a Fund Member;
- (ii) is not an associate of any Employer;
- (iii) is not an employee of any Employer, or an associate of any Employer;
- (iv) is not, in any capacity, a representative of a trade union or other organisation representing the interests of one or more of the Fund Members;
- (v) is not, in any capacity, a representative of an organisation representing the interests of any Employer; or
- (vi) meets any other criteria specified in Relevant Law for the appointment of an independent trustee,

as an additional Trustee ('Independent Trustee').

(b) the procedures for appointing and removing an Independent Trustee and any term of office of an Independent Trustee will be as specified in procedures adopted by the Trustees ('Independent Trustee Appointment and Removal Procedures') for the appointment and removal of an Independent Director in accordance with paragraph (c) of this clause 15, but must not be inconsistent with the requirements of Relevant Law.

(c) the Trustees may, from time to time:

- (i) adopt Independent Trustee Appointment and Removal Procedures which may or may not be in substitution for any Independent Trustee Appointment and Removal Procedures previously adopted under this clause 15;
- (ii) amend or revoke the Independent Trustee Appointment and Removal Procedures;

but:

- (iii) the Independent Trustee Appointment and Removal Procedures must not be inconsistent with Relevant Law;
- (iv) if any provision of the Independent Trustee Appointment and Removal Procedures is inconsistent with Relevant Law it will be void and of no effect.

The Independent Trustee Appointment and Removal Procedures may deal with such matters as eligibility for appointment as an Independent Trustee, the term of office of an Independent Trustee, vacancies in the office of Independent