

**SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993**

**SELF MANAGED SUPERANNUATION FUND**

**GOVERNING RULES FOR**

**Borthwick Super Fund**

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## GOVERNING RULES

This Deed is dated the 20<sup>TH</sup> day of July 2012 .

### PARTIES

The parties named in the Reference Schedule.

### BACKGROUND

- 1.1 The parties to this Deed wish to establish and maintain an indefinitely continuing superannuation fund for the purposes of the provision of benefits for Member(s) and their dependants in accordance with the Superannuation Industry (Supervision) Act 1993.
- 1.2 The Trustee named in the Reference Schedule is the first Trustee.
- 1.3 The Initial Member(s) named in the Reference Schedule are the first Member(s) of the Fund.
- 1.4 It is intended that the Fund will be administered as a Self Managed Superannuation Fund regulated under the provisions of the Superannuation Industry (Supervision) Act 1993.

### OPERATIVE PROVISIONS

#### Fund Establishment

- 1.5 The parties to this Deed hereby establish a superannuation fund which is to be known by the name referred to in the Reference Schedule ("the Fund").
- 1.6 The Fund commences and comes into operation on the date of this Deed.

#### Interpretation

##### 2.1 Interpretation

In this Deed unless the context otherwise requires words importing gender include any gender and words importing number include the singular number and the plural number. The following words have the meanings unless the contrary intention appears and subject to paragraph 2.3:-

"Act" means the Superannuation Industry (Supervision) Act, 1993, the Tax Act, Veterans' Entitlements Act 1986, Social Security Act 1991, Part VIII B Family Law Act 1975, Corporations Act 2001 and any other legislation (as may be amended from time to time) governing superannuation funds from time to time and any re-enactment thereof and includes regulations from time to time made in accordance with that Act, and the determinations from time to time of the Commissioner.

"Allocated pension" means a pension first provided on or after 1 July 2007 in accordance with SIS Regulation 1.06(9A).

"Associated Employer" means any company, person or firm which the Trustee admits (including, subject to the Superannuation Conditions, by acceptance of a contribution from an employer of a Member) under this Deed to participate as a contributing Employer to the Fund.

"Auditor" means an approved Auditor as defined in Section 10 of the SIS Act.

**"Beneficiary"** means a Member, Dependant or other person entitled to receive a benefit under this Deed or under the SIS Act.

**"Cashing Restrictions"** has the meaning in SIS Regulation 6.01(2).

**"Constitutional Corporation"** has the meaning in Section 10(1) of the SIS Act.

**"Commissioner"** means the Regulator defined in the Act and includes the Commissioner of Taxation, the Australian Prudential Regulation Authority, or the Australian Securities & Investments Commission, as may be appropriate having regard to the provisions of the Act and the nature of the Fund, or any other governmental authority responsible for administering or regulating the laws or rules relating to the concessional taxation of Superannuation Funds.

**"Deed"** means this Deed or any alteration to, addition to or variation made to it from time to time except where the context otherwise requires.

**"Dependant"** has the meaning in the SIS Act.

**"Eligible Person"** means any person in respect of whom the Trustee may accept contributions under the SIS Act or who may otherwise become a Member of the Fund under the SIS Act.

**"Employee"** has the meaning in Section 10 of the SIS Act.

**"Employer"** has the meaning in Section 10 of the SIS Act.

**"Employer-Sponsored Member"** means a Member who is an employee of a contributing employer.

**"Employment"** means gainful employment, part-time employment and full-time employment and includes the services of an independent contractor and all senses of the word employ include the same meaning.

**"Equalisation Account"** means an account kept in accordance with paragraph 26.3.

**"Financial Year"** means the accounting period selected by the Trustee for the Fund. It must not exceed twelve months and may at times be less than twelve months.

**"Gainfully Employed"** has the meaning in the SIS Regulations.

**"Mandated Employer Contributions"** has the meaning in the SIS Act.

**"Member"** means an Eligible Person who has been admitted to the Fund and where the context so requires or permits or the SIS Act or Superannuation Conditions requires, includes a Past Member, a former Member and a Pensioner or their legal personal representative.

**"Member's Benefit"** in respect of a Member is the net amount standing to the Member's credit in that Member's accounts including the employer's contribution account (if any), the Member's contribution account and the vested employer's contribution account (if any) plus the realisable value (if any) at that time of any policy of insurance owned by the Trustee on the life of that

Member or paid for out of that Member's employer's contribution account (if any), Member's contribution account or vested employer's contribution account (if any) or other Member's account.

"Minor" means a person under 18 years of age.

"Member Financed Benefits" has the meaning in the SIS Act.

"Old-Age Pensions" has the same meaning as in paragraph 51(xxiii) of the Constitution.

"Part-time" has the meaning that applies in the circumstances referred to in the SIS Act.

"Past Member" means a former Member who still has a right to receive a benefit from the Fund.

"Payment Split" has the meaning given by Section 90MD of the Family Law Act 1975.

"Pension Benefit Account" means an account that provides a retirement benefit.

"Pensioner" means a retired Member, Past Member of the Dependent of a deceased Member, Past Member or Pensioner who is in receipt of or who is entitled to a pension.

"Personal Representative" or "Legal Personal Representative" means in relation to a Member a person who satisfies the Trustee that such person is entitled to represent the Member and to give valid receipts and discharges on the Member's behalf and in relation to a deceased Member the person who has been granted probate of a will or letters of administration of an estate of that Member.

"Preservation age" has the meaning given by the SIS Regulations.

"Preserved" means the portion of an account or a benefit that is preserved for the benefit of a Member under the Superannuation Conditions.

"Regulated Superannuation Fund" has the meaning in the SIS Act.

"Reserve Account" means an account referred to in paragraph 19.1(d) or otherwise established to hold reserves under this Deed.

"Retire" means to cease to be engaged in the employment in which the Member is for the time being engaged and "Retirement" has a corresponding meaning subject to the SIS Regulations and to Regulation 3.01(7)(b).

"Retirement Age" "Retirement Date" and "Retiring Age" mean the sixty-fifth birthday or such other date or age as the Trustee determines, that is consistent with the SIS Act.

"Reversionary Beneficiary" means a person who becomes entitled to a Member's Benefit in respect of a superannuation interest of a Member, after the Member dies.

"Segregated Current Pension Assets" has the meaning given from time to time by the Tax Act.



**"Self Managed Superannuation Fund"** has the meaning given from time to time by the SIS Act.

**"SIS Act"** means the Superannuation Industry (Supervision) Act 1993 as amended from time to time and regulations from time to time made in accordance with that Act.

**"SIS Regulations"** mean the regulations made under the SIS Act as amended from time to time and includes any applicable modification declaration.

**"Splittable Contribution"** has the meaning in Part 6 of the SIS Regulation.

**"Spouse"** in relation to a person, includes:

(a) another person legally married to or, although not legally married to, living with the person on a genuine domestic basis as the husband or wife of the person; and

(b) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and

(c) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple; and

(d) any person who is a spouse for the purposes of the Act.

**"Standard"** means a standard prescribed by the SIS Act.

**"Standard Employer-Sponsor"** has the meaning in the SIS Act.

**"Superannuation Conditions"** subject to clause 2.4 means any provision which may be applicable to the Fund under the Act or other laws or rulings of the Commissioner which must or may be met for the Fund to be treated with the most concessional taxation treatment available or to be treated in any manner which, in the opinion of the Trustee, is concessional and includes conditions which must be met for the Fund to become or remain a self managed superannuation fund.

**"Tax Act"** means Income Tax Assessment Act 1936 or 1997 as may be applicable.

**"Temporary incapacity"** has the meaning in the SIS Regulations.

**"Trustee"** means the Trustees or the Trustee for the time being of the Fund and "Trustees" has the same meaning.

## 2.2 Headings

The headings in this Deed are for convenience and reference only and are not to affect its interpretation.

### 2.3 Meanings

- (a) Any word or expression which is defined in the Act has in this Deed the meaning given to it by the Act. To the extent that a meaning given to a word or expression in this Deed is inconsistent with the meaning given to it by the Act the meaning given by the Act prevails unless the contrary intention appears. Where more than one meaning may be given then the Trustee may determine which of those meanings applies.
- (b) This Deed will be read and construed on the basis that the provisions of the SIS Act are incorporated to the extent that they impose requirements on the Trustee or are required by that Act to be so incorporated, but this Deed will not be so read or construed and no provision will be so incorporated if to do so would constitute a breach of the power granted by this Deed to vary, add to or rescind its provisions. To the extent not prohibited by the SIS Act, the Trustee may however by resolution determine that a provision of the SIS Act does not apply, either generally to the Fund or in respect of any particular application and the Deed must be interpreted accordingly.
- (c) If a provision of this Deed refers to a provision of a statute or regulation then it shall be interpreted as referring to that provision as may be made whether before or after this Deed and as may be amended, enacted or replaced from time to time.

### 2.4 Inconsistencies with the Superannuation Conditions

Where it appears to the Trustee that there is any inconsistency or difference between:-

- (a) any provision of any applicable legislation or other laws and another provision or provisions;
- (b) the rulings of the Commissioner and other rulings of the Commissioner;
- (c) the Acts or laws referred to in (a) and the rulings referred to in (b);
- (d) this Deed,

then subject to the Act, the Trustee may determine, either generally or in respect of any particular application, in their absolute discretion, which provision or ruling applies and the Deed must be construed accordingly.

### 2.5 Proper Law

This Deed is governed and construed and takes effect in accordance with the laws of the State or Territory of residence of the Trustee (however Section 35(b) of the South Australian Trustees Act 1936 does not apply to this Deed). Any person having or claiming any interest under this Deed must submit to the jurisdiction of the Courts of that State or Territory.

### 2.6 Saving Provision

To the extent any provision of this deed would be void or invalid, but for this paragraph ("an invalid provision"):

- (a) where a reading down or limitation of the operation of the invalid provision would remove the voidness or invalidity, that must be done in constructing the Deed;

- (b) where it is not possible to apply paragraph (a), the invalid provision is severed from the Deed;
- (c) in any event, an invalid provision does not affect the continued operation of the remainder of the Deed.

**2.7 Trustee must comply with the Law**

The Trustee must not do or fail to do anything as Trustee of the fund that would result in either a breach of law, including the Act or the fund ceasing to qualify as a self managed fund under superannuation law or to qualify for concessional tax treatment under the Tax Act, even if the Trustee is otherwise empowered.

**2.8 Power to comply with Family Law**

The Trustee may do anything that it considers necessary to comply with the SIS Act and Part VIII B of the Family Law Act 1975.

**Sole Purpose Test**

**3.1 Core Purposes**

The Trustee must ensure that the Fund is maintained solely for one or more of the core purposes or both one or more of the core purposes and for one or more of the ancillary purposes provided in the SIS Act.

**3.2 Sole Purpose**

Despite any other provision of this Deed, the Trustee must be a Constitutional Corporation unless the sole or primary purpose of the fund is the provision of old-age pensions.

**Constitution of Fund**

**4.1 Trusts**

The assets of the Fund are vested in the Trustee who stands possessed of the same upon trust to apply the same in the manner and for the objects and purposes of the Fund as set out in this Deed and any amendment.

**4.2 Perpetuities**

The Fund must be terminated if the rule of law known as the rule against perpetuities applies to the Fund, on the expiration of the maximum period allowed under that rule for the duration of the trusts established under this Deed.

**Notice of Election**

**5. Trustee to give notice to become a Regulated Superannuation Fund**

The Trustee must give to the Commissioner within the period provided by the SIS Act a written notice in the approved form and signed in the manner required by the SIS Act electing that the SIS Act is to apply in relation to the Fund.

## **Statutory Covenants**

### **6. Statutory Covenants**

The purpose of this paragraph is explanatory only. The effect of Section 52 of the SIS Act is that the Trustee covenants as follows in accordance with the SIS Act:-

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:-
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund;
- (e) not to enter into any contract, or do anything else, that would prevent from, or hinder the Trustee in properly performing or exercising the Trustee's functions and powers; this does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (i) 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;
  - (ii) 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;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund - to formulate and to 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;
- (h) to allow a beneficiary access to any information or documents prescribed under the SIS Act.

- (i) to observe such covenants as are prescribed to be included in the governing rules of the Fund prescribed by the Act.

#### **Statutory Requirements**

#### **7. Self Managed Superannuation Fund**

Subject to paragraph 3.2 and despite any other provision of this Deed, the Trustee is empowered to do all things necessary to be done by it to ensure that the Fund satisfies the conditions applicable to self managed superannuation funds regulated in accordance with the SIS Act.

#### **Alterations to the Deed**

#### **8.1 Methods to alter Deed**

Subject to this clause 8 and the Superannuation Conditions, this Deed may be amended:

- (a) by deed executed by the Trustee and, where the Superannuation Conditions require it, with the consent of the Members; or
- (b) by oral resolution of the Trustee and subject to compliance with the Superannuation Conditions.

#### **8.2 Effective Date**

An amendment under this paragraph takes effect from the date (prospective or retrospective) specified in the resolution or if not specified on the date of such Deed or the date on which the resolution is made.

#### **8.3 Prohibition**

If the Act prohibits it, this Deed must not be amended in such a way that:

- (a) a person other than a Constitutional Corporation would be eligible to be appointed as Trustee unless the Deed or any amending deed, provides and will continue to provide after the amendment is made, that the Fund has, as its sole or primary purpose, the provision of old-age pensions; or
- (b) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Deed or any amending deed provides and will continue to provide after the amendment is made, that the Trustee must be a Constitutional Corporation.

#### **8.4 Notice to be given to Members following alteration**

The Trustee must give to each Member such information or notice in respect of the amendments as may be required by the Superannuation Conditions.

#### **Membership**

#### **9.1 Eligibility**

Any Eligible Person may make application in writing to the Trustee in a form approved by the Trustee from time to time to join the Fund, subject to the Act and the Superannuation Conditions.

**9.2 Trustee may refuse**

The Trustee may accept or refuse any application for membership in the Trustee's absolute discretion and is not required to assign any reason for any refusal.

**9.3 Trustee to give notice**

- (a) A person who is not already a member becomes a Member, no later than when the Trustee approves their application.
- (b) If required by the Act, on admission to membership of the Fund, the Trustee must give notice to the Member that they have been appointed a Trustee of the Fund or a director of the body corporate Trustee of the Fund and the Trustee must take all steps to effect that appointment, unless the Member is under a legal disability or is otherwise prohibited from acting as Trustee or director of the body corporate Trustee under the SIS Act and subject to the consent of the Member being obtained under sub-clause 10.4.

**9.4 Member bound by Deed**

A person upon becoming a Member is deemed to have consented to and to be bound by the provisions of the Deed.

**9.5 Cessation of membership**

Subject to the Superannuation Conditions a person ceases to be a Member on the happening of the first of the following:-

- (a) death, however subject to the SIS Act the deceased Member's legal personal representative is deemed to be a Member on that death;
- (b) when the total of all amounts payable under this Deed in respect of the Member's membership has been paid;
- (c) when under this Deed any benefit payable to the Member or any person on the Member's account ceases to be payable; or
- (d) when the Trustee so resolves, subject however to the Superannuation Conditions and the SIS Act.

**9.6 Minors**

- (a) A minor may be a Member of the fund subject to the Act;
- (b) the minor's parent or guardian must make the application for the minor to become a Member in a form approved by the Trustee;
- (c) decisions in relation to the minor's membership must be made by the minor's parent or guardian until the minor is 18 years or after the minor is 16 years provided that the parent or guardian notifies the fund that the minor will be making decisions in relation to the minor's membership;
- (d) when the minor is 18 years the minor becomes a director of the Trustee of the fund (or a Trustee) provided that the Trustee has done everything necessary to appoint the minor as a director of the Trustee (or as a Trustee).

## **Trustees**

### **10.1 Who can be Trustee**

Subject to clause 3.2, if the Trustee is a Constitutional Corporation, each Member of the Fund must be a Director of that corporation. If the Trustees are individuals, each Member of the Fund must be a Trustee, unless the Member is under a legal disability or otherwise not entitled to become a Trustee or director of the corporate Trustee under the SIS Act.

### **10.2 Number of Trustees**

The number of Trustees must be such number as does not exceed the maximum number and is not less than the minimum number permitted by the SIS Act necessary for the fund to satisfy the provisions applicable to self managed superannuation funds:

- (a) If the Fund has individual Trustees: the number of Trustees must be more than one but less than five; or
- (b) If the Fund has a corporate Trustee, the number is one.

### **10.3 Written consent of Trustee required**

A person is not eligible for appointment as a Trustee, or, if the Trustee is a corporate Trustee, as a director of that corporate Trustee, unless the person has consented in writing to the appointment.

### **10.4 Consent of new Members to Trustee**

A person joining the Fund as a Member consents, as a condition of joining the Fund:

- (a) to the Trustee, at the date of the Member so joining, continuing to act as Trustee; and
- (b) to being appointed as a Trustee of the Fund, or if the Trustee is a body corporate, to being appointed as a director of that body corporate;

unless that Member is under a legal disability or otherwise not entitled to become a Trustee under the SIS Act.

### **10.5 Chairperson**

The Chairperson of any meeting of the Trustee or of the body corporate sole Trustee does not have any second or casting vote.

### **10.6 Meetings of Members**

The Trustee may establish procedures and policies for the regulation of meetings of Members.

### **10.7 Decisions of Trustee**

If required by the Superannuation Conditions, a decision of:

- (a) the individual Trustees of the Fund; or
- (b) the Board of Directors of the Corporate Trustee of the Fund;

must be taken not to have been made, or to be of no effect, if fewer than two thirds of the total number of the Trustees or Directors, as the case requires, voted for it. Otherwise a majority vote is sufficient.

#### **10.8 Vacancy in Office of Trustee**

- (a) The office of a Trustee or of a director of a body corporate sole Trustee ipso facto becomes vacant if the Superannuation Conditions require it or upon the Trustee's or director's:
  - (i) death;
  - (ii) mental incapacity;
  - (iii) retirement by written notice to the Members and any other Trustee;
  - (iv) becoming a disqualified person within the meaning of the Act;
  - (v) suspension or removal under the Act;
  - (vi) tenure of the Trustee's position expires; or
  - (vii) in the case of a corporate Trustee, the Trustee's liquidation, administration or winding up; or
  - (viii) if the Trustee's continuance in office would result in the fund no longer satisfying the conditions of the SIS Act applicable to self managed superannuation funds.
- (b) Pending any appointment of a Trustee where a Member has died, the deceased Member's legal personal representative may, with the consent of any other Members, act as Trustee in place of the deceased Member/Trustee (or director of a corporate Trustee) in any period commencing on the Member's death and ending on the date the Member's Benefits become payable.
- (c) Pending any appointment of a Trustee where a Member is under a legal disability the Member's legal personal representative may with the consent of any other Members, act as Trustee in place of that Member/Trustee (or director of a corporate Trustee) in any period when the Member is under a legal disability or the legal personal representative has an enduring power of attorney from that Member and ending on the date the Member's Benefits become payable.
- (d) The parent or guardian of a Member who is under 18 and who does not have a legal personal representative may be appointed as a Trustee.
- (e) Paragraphs (b), (c) and (d) are subject to the SIS Act.

#### **10.9 Members to fill vacancy**

- (a) Any vacancy in Trustee or board of a corporate Trustee must be filled within 90 days after it occurred where the Superannuation Conditions require it, or such other time as permitted under the Superannuation Conditions. Any vacancy may, subject to the Superannuation Conditions (and if required by the Superannuation Conditions with the consent of the Trustee), be filled by a resolution of a two-thirds majority of Members and may also be effected by Deed signed by or on behalf of the Members and signed by the new Trustee.



- (b) In the event that any vacancy in Trustee or board of a corporate Trustee is not filled within 90 days after it occurred, the Members may fill the vacancy by a resolution made by a two-thirds majority of Members.

**10.10(a) Members may remove Trustee**

Subject to the Superannuation Conditions and if required by them, with the Trustee's consent, the Trustee or, where there is more than one, a Trustee, may be removed by a two-thirds majority of the Members and such removal is effective upon the passing of a resolution to that effect in accordance with this Deed.

- (b) **Members may replace Trustee**

At the time of making a resolution under paragraph (a) above the Members may (with the written consent of the appointee or appointees) by resolution made and effected in like manner appoint a Trustee or Trustees to replace the person or persons so removed.

**10.11 Self Managed Superannuation Fund- Removal and Appointment of Trustee**

- (a) Any appointment or removal of a Trustee or a director of a body corporate Trustee must be made in such manner as will satisfy the provisions of the SIS Act applicable to self managed superannuation funds.
- (b) Subject to the SIS Act, in addition to any other method provided in this Deed, a Trustee or Trustees or an additional Trustee(s) may be appointed or a Trustee removed by a Deed giving effect to such appointment or removal, signed by the Members, the Trustee to be appointed and the Trustee at that time or by the duly appointed attorney, agent, Legal Personal Representative, parent or guardian as may be appropriate. If a Trustee's or a director of a corporate Trustee's office is vacated in any manner described in paragraph 10.8(a), the signing by such Trustee or director is not required.
- (c) A Trustee cannot be appointed as Trustee if they are not eligible to act as Trustee of a self managed superannuation fund under the Act.

**Limitation of Liability**

**11.1 (a) Limitation**

Subject to paragraph 11.1(b), no Trustee or, where the Trustee is a corporation, none of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for any reason.

- (b) **Exception**

Paragraph 11.1(a) does not apply to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise.

**11.2 (a) Indemnity**

The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with the execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under this Deed.

**(b) Payment and reimbursement**

Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:-

- (i) to meet the indemnities referred to in paragraph 11.2(a); and
- (ii) to meet all liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

For this purpose and to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

**Approval of Members and Employers**

**12. (a) Approval of Members/Associated Employers Generally**

Subject to the Superannuation Conditions, where under the terms of this Deed, in relation to the exercise by the Trustee of any power or authority or otherwise, the resolution, consent, approval or agreement (herein referred to as "resolution") of the Members or Associated Employer(s) is required, the passing or rejection of that resolution must be determined by a requisite majority of Members/Associate Employers in writing unless all Members or Associated Employers of the Fund at the time of signature have signified their consent in writing otherwise.

**(b) Requisite majority**

In the provisions of this sub-paragraph the expression "requisite majority" means:-

- (i) in the case where a two-thirds majority is required - two-thirds or more of the responses;
- (ii) in any other case - one-half or more of the responses.

**(c) Notification to Members/Associated Employers**

The Trustee must within fourteen (14) days of any meeting held under the provisions of this sub-paragraph notify all Members/Associated Employers of the result thereof.

**(d) Strict compliance not essential**

Any resolution made under this paragraph is not invalidated by reason of any or want of strict compliance with these provisions unless it is shown that there has or may be caused thereby some substantial and irremediable injustice.

**(e) Written Resolution**

Despite this clause 12 the Members may unanimously resolve to give their approval by signing a document or identical documents to the requisite effect.

## **Trustee not to be Subject to Direction**

### **13.1 Directions**

If the Superannuation Conditions so require, the Trustee, despite anything in this Deed to the contrary, must not be subject, in the exercise of any of the Trustee's powers under the Deed, to direction by any other person.

### **13.2 Direction taken to be a request**

If any provision in this Deed is inconsistent with the preceding sub-paragraph then, despite such provisions, the Trustee must treat the direction as a request and the Trustee is not bound by such provision or request.

## **Investments**

### **14.1 Investment Strategy**

The Trustee must formulate and give effect to an investment strategy in accordance with the SIS Act. Subject to the SIS Act a Reserve Account may have a separate investment strategy.

### **14.2 Loans**

The Trustee may not lend money to Members unless the Act permits loans to Members.

### **14.3 Acquisition of assets from Members**

The Trustee must not intentionally acquire an asset from:

- (a) a Member of the Fund; or
- (b) a relative of a Member of the Fund.

unless the Superannuation Conditions otherwise permit.

### **14.4 Borrowing**

- (a) The Trustee may borrow money or maintain an existing borrowing of money and assign, pledge, mortgage or charge any of the assets of the Fund as security for any such financial accommodation if the Superannuation Conditions permit.
- (b) Without limiting paragraph 14.4(a) and subject to the Superannuation Conditions, the Trustee may raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustees think fit, and:
  - (i) Any money raised by the Trustees will form part of the Fund;
  - (ii) Interest payable on such borrowings as referred to in this clause 14.4 is a proper outgoing of the Fund.

#### **Limited Recourse Borrowing**

- (c) Without limiting paragraph 14.4(a) the Trustee has all the necessary powers to enter into any arrangement that complies, to the extent necessary, with Section 67A & B of the SIS Act and subject to that section (and without limiting it) the Trustee may:
  - (i) borrow money;

- (ii) maintain an existing borrowing of money;
- (iii) assign, pledge, mortgage or charge assets of the Fund as security for a borrowing or financial accommodation;
- (iv) enter into and execute all documents including documents in connection with acquiring a beneficial interest of an original asset or replacement asset as defined in that section; and
- (v) pay the expenses incurred in any such borrowing from the borrowed money;
- (vi) refinance a borrowing;
- (vii) do all such things as may be ancillary or necessary thereto including, without limitation, the variation and transposing of any asset so acquired including such acts and the entering into of such deeds or documents as may be necessary with any person or entity holding or to hold legal title to an asset referred to in that section.

#### **14.5 In-house assets**

The Trustee must take all reasonable steps to ensure that the in-house assets rules applicable to the fund, if any, are complied with and may only invest in in-house assets if permitted by the Act. Subject to those conditions the Trustee may continue to hold any existing in-house asset.

#### **14.6 Arms' length dealing required**

The Trustee must not, if prohibited by the Superannuation Conditions, make investments unless the Trustee and the other party to the relevant transaction are dealing with each other at arms' length in respect of the transaction.

#### **14.7 Power to invest as if natural persons**

- (a) Subject to the SIS Act, the Trustee may make any investment that a natural person may make.
- (b) The Trustee has power to sell, vary or transpose any investment/asset of the Trust.
- (c) All investments by the Trustee are subject to compliance with the Superannuation Conditions

#### **14.8 Other investment powers**

Without limiting the preceding sub-clause but subject to the limitations in it and subject to the Superannuation Conditions, the Trustee may invest in: -

- (a) any investment authorised by the laws of Australia or of any of its States or Territories for the investment of trust funds;
- (b) the purchase of or subscription for preference or other shares or stock or preference or other share or stock options in any company registered in Australia or in any other country;
- (c) the purchase of units or sub units of property or other investment trusts or other common fund;

- (d) deposits with any bank, life insurance company or building society or on loan to any company, organisation or person not being a Member;
- (e) policies of insurance, assurance, endowment, deposit administration or investment;
- (f) the purchase of annuities and deferred annuities from a life insurance company or other organisation;
- (g) the purchase of any real estate in Australia;
- (h) deposits with or loans to an Employer;
- (i) instalment warrants;
- (j) any other investment whether or not similar to any of the above which the Trustee considers to be appropriate.

#### **14.9 Nominees for Trustee**

Any investment may be held in such names including the name of a nominee or custodian (whether an individual or corporation) as the Trustee from time to time determines to the extent not prohibited by the Superannuation Conditions.

#### **14.10 Continuation of loans to Members**

The Trustee may continue any loans transferred in respect of a Member from another superannuation fund under conditions that will not cause the Fund to fail to satisfy the Superannuation Conditions.

### **Investment Choice**

#### **15.1 No obligation**

- (a) The Trustee is not obliged to provide investment choice to Members or Beneficiaries of the Fund except as required by the SIS Act;
- (b) The Trustee may however in their absolute discretion determine to provide investment choice subject to the Superannuation Conditions either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund.

#### **15.2 Investment Strategy**

- (a) Where the Trustee determines to provide investment choice, they must establish an investment strategy for each of the investment choices available to Members and Beneficiaries and where appropriate must allocate or designate particular assets of the Fund to be held in accordance with that strategy. The Trustee must notify Members and Beneficiaries of the investment objectives of each of those strategies and provide any other information required for this purpose by the Superannuation Conditions to enable Members and Beneficiaries to make an informed decision regarding the effect of and risks associated with, each of those investment strategies;

- (b) The notification provided must include the various directions that a Member or a Beneficiary can give to the Trustee under sub-clause 15.5 and the circumstances in which any such directions can be given or altered.

### **15.3 Trustee must monitor**

The Trustee must monitor each of the investment strategies established under sub-clause 15.2 and the assets held in accordance with each strategy in order to ensure that each of those investment strategies is appropriate in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those strategies is available.

### **15.4 Selection and direction**

- (a) A Member or Beneficiary of the Fund may, where the Trustee has determined to offer investment choice in accordance with sub-clause 15.1, select one or more of the investment strategies formulated by the Trustee under sub-clause 15.2 and direct the Trustee to invest part or the whole of the monies held in respect of that person in accordance with the strategy or strategies selected by that person under this paragraph.
- (b) Any directions by the Member or Beneficiary must only be given in accordance with the Superannuation Conditions and the Trustee must ensure that the Member or Beneficiary is provided with such information as required by the Superannuation Conditions in order to enable the Member or Beneficiary to make an informed decision.

### **15.5 Member document**

- (a) A Member or Beneficiary who wishes to select one or more investment strategies pursuant to sub-clause 15.2 must give to the Trustee such documents as the Trustee requires and must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary.
- (b) The Trustee is not bound to act on any such document if it breaches any of the requirements of the Superannuation Conditions.

### **15.6 Asset specific investments**

- (a) Except to the extent permitted by the Superannuation Conditions, the Trustee is not bound to make a particular investment in respect of a Member or Beneficiary of the Fund.
- (b) Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustee must be made for an additional investment strategy or strategies for those particular investments ("asset specified investment strategy") to be formulated by the Trustee and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with sub-clause 15.2.
- (c) The Trustee may in their absolute discretion approve or reject any requests made under this paragraph.

### **15.7 Advice to Members**

The Trustee must, if required by the SIS Act, advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustee in respect of those

Members or Beneficiaries or classes of Members or Beneficiaries who decline, or otherwise do not select an investment strategy.

### **Powers of Trustee**

#### **16.1 Discretionary powers of Trustee**

Subject to the Act, the Trustee has all the powers of a natural person. The Trustee in the exercise of the authorities, powers and discretions hereby vested in them have an absolute and uncontrolled discretion and may exercise or enforce or delegate (by power of attorney or otherwise) all or any of the authorities, powers or discretions from time to time or may refrain from exercising all or any of such authorities, powers or discretions from time to time and their decision as to the interpretation and effect of this Deed is final and binding on all parties.

#### **16.2 Additional powers**

Subject to the Superannuation Conditions and without limiting the preceding sub-paragraph, the Trustee also has the following powers:

- (a) all the powers of a natural person;
- (b) to insure or re-insure any risks contingencies or liabilities of the Fund;
- (c) to open and operate a bank account at any bank and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (d) to institute or defend or otherwise deal with any legal proceedings in respect of the Fund;
- (e) to be indemnified or to give indemnities to or on behalf of any person or entity the Trustee thinks fit;
- (f) to enter into any contract and do all such acts matters and things as the Trustee may consider necessary or expedient for any matter or purpose in respect of the Fund or this Deed;
- (g) to engage the services of any company, person or firm as the Trustee may consider necessary for the proper administration and management of the Fund or to obtain expert advice;
- (h) to appoint an Auditor of the Fund from time to time at such remuneration and on such other conditions as the Trustee thinks fit; and
- (i) to deduct and pay from the Fund the amounts of administration and other costs including any tax or duty payable by the Trustee in connection with the Fund and to debit any of the accounts of the Fund (including an account representing Member Financed Benefits) with such amounts in such manner as the Trustee may determine and which must not cause the Fund to fail to comply with the Superannuation Conditions;
- (j) to deduct from any benefit or other payment hereunder any tax or duty payable whether from or in respect of it and whether payable by the person entitled thereto or the Fund and must then pay that tax or duty to the relevant authority and the person is be entitled to receive only the net benefit or payment after the deduction has been made;

- (k) to sell, transfer, hire, lease or dispose of any real or personal property of the Fund, whether at a profit or not;
- (l) to grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such an option will be at a profit or not;
- (m) to buy, transfer, acquire, hire or lease any property;
- (n) to invest in its name or under its control the Fund in any one or more of the investments authorised by this Deed with power in the Trustee's absolute discretion either to retain the investment in that form or to sell or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price with or without interest and with or without security) and power in the Trustee's absolute discretion from time to time to vary or transpose any investments into others authorised by this Deed;
- (o) to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this sub-paragraph, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;
- (p) to do anything incidental to the exercise of any of the Trustee's powers;
- (q) such other powers as are necessary, desirable or appropriate to the fulfilment of the purposes of the Fund and its proper and efficient maintenance, management, operation, promotion and advancement and its compliance with and exercise of powers authorities and discretions available under the Superannuation Conditions;
- (r) such other powers conferred on a Trustee by statute or general law in addition to the powers conferred by this Deed.

### 16.3 Trustee's interest

Subject to the Superannuation Conditions, the Trustee has power generally to exercise or concur in exercising all the Trustee's powers and discretions in this Deed or conferred by law even if :-

- (a) a Trustee or
- (b) any person being a director or shareholder of a Trustee (being a company)

has or may have a direct or personal interest (whether as Trustee of any other settlement or in their personal capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any unit trust or beneficial object of any other trust) in the method 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 even if the Trustee for the time being is the sole Trustee.



### **Notification of significant adverse effects**

#### **17. Trustee to give notice of significant adverse effect**

If the Trustee becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund, they must give such notice as may be required by the Superannuation Conditions.

### **Insurance**

#### **18.1 Life insurance**

The Trustee has power from time to time to effect policies of insurance upon the life of any Member to secure payment upon death of the Member or the happening of any other contingency in respect of that Member of such amount as the Trustee in their absolute discretion thinks fit and to renew any such policies for such period as the Trustee may think fit and the Trustee has power to accept an assignment of any policies of insurance effected in respect of a Member.

#### **18.2 Annuities**

The Trustee has power from time to time to effect annuity or deferred annuity policies upon the life of any Member or any of the Member's Dependents of such amount as the Trustee determines and the Trustee has power to accept an assignment of such annuity or deferred annuity policies effected in respect of a Member.

#### **18.3 Powers**

Policies must be issued in the names of or assigned to the Trustee and must be held by the Trustee upon and subject to the provisions of this Deed and the Trustee may enforce surrender sell or otherwise deal with any such policies as they in their absolute discretion think fit provided that the Trustee may also arrange for annuity or deferred annuity policies to be issued in the name of a beneficiary.

#### **18.4 Evidence to be provided by Member for insurance**

A Member must provide any evidence that may be required from such Member in order to secure cover under any insurance policy and the Trustee is not bound to seek completion of such policy if evidence satisfactory to the insurance company is not provided.

#### **18.5 Premiums**

Subject to the Superannuation Conditions, the Trustee may debit such accounts of the Fund as they determine with the applicable insurance premiums.

### **Accounts**

#### **19.1 Trustee to keep accounting records**

The Trustee must keep such minutes, records and reports as they consider appropriate for the proper administration of the Fund and such further records, minutes and reports as may be required by the Superannuation Conditions and may:

- (a) keep such accounting records as correctly record and explain the transactions and the financial position of the Fund.
- (b) keep its accounting records so as to enable the preparation of the accounts and statements in accordance with the Superannuation Conditions.

- (c) keep its accounting records so as to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Superannuation Conditions.
- (d) keep a Reserve Account to which may be credited or debited such amounts as the Trustee determines from time to time subject to the Superannuation Conditions.

#### **19.2 Balance sheet**

The Trustee must as soon as practicable after the expiration of each Financial Year cause to be drawn up such:

- (a) balance sheets and statements of financial position;
- (b) operating statements;
- (c) other financial accounts and statements as are required by the Superannuation Conditions; and/or
- (d) such other statements as the Trustee thinks fit.

#### **19.3 Accounts and statements to be prepared**

The Trustee may prepare such accounts and statements additional to those described in this paragraph as are required by the Superannuation Conditions or otherwise, as they think fit.

#### **19.4 Audit**

If required by the Superannuation Conditions, the Trustee must ensure that the accounts and statements of the Fund are audited.

#### **19.5 Maintenance of reserves**

- (a) The Trustee may maintain reserves of the Fund subject to the SIS Act.
- (b) Subject to the SIS Act, paragraph 6(g) of this Deed and the investment strategy applicable to the reserve, a Member is not entitled to any property held in a reserve account and the Trustee is not required to allocate such property.
- (c) The Trustee has, in relation to reserve accounts, all the powers applicable to the Fund, subject to the Superannuation Conditions.

### **Rollover**

#### **20. Trustee may pay rollovers**

The Trustee may pay benefits to an eligible rollover fund or other fund as permitted by the Superannuation Conditions.

### **Member Accounts**

#### **21.1 Trustee to keep Member and Employer accounts**

Subject to complying with the Superannuation Conditions, the Trustee may keep such Member Accounts in respect of Member and Employer contributions (if any) as they think fit, including accounts in respect of segregated current pension assets, and accounts may contain such particulars as the Trustee determines.

## **21.2 Details of accounts**

Each Member Account may include -

- (a) An Employer Contribution Account showing -**
  - (i) contributions by any Associated Employer to that account;**
  - (ii) sums which the Trustee determines to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed; and**
  - (iii) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion);**
- (b) A Member Contribution Account showing -**
  - (i) contributions by the Member to that account;**
  - (ii) sums which the Trustee determines are properly to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed; and**
  - (iii) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion); and**
- (c) Any such Account may, subject to the Superannuation Conditions, be debited or credited and such other entries may be made or particulars recorded as the Trustee deems to be appropriate including provisions for reserves.**
- (d) Without limiting the discretion in (c) and subject to the SIS Act and the Superannuation Conditions, the Trustee may debit and or credit such accounts, amounts which the Trustee determines are appropriately created or debited including a Payment Split under section 90 MD Family Law Act, splittable contributions, amounts to be transferred to a Reserve Account under this Deed, expenses, losses and benefit payments (whether lump sum or pension) and taxes.**

## **22.1 Segregated Current Pension Assets**

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 the Superannuation Conditions or SIS Act.

**22.2 The transfer values and annual valuations of the segregated current pension assets must be determined as may be required by the Tax Act.**

**22.3 The Trustee may, in accordance with the Tax Act or other applicable laws or Superannuation Conditions, re-transfer assets segregated in order to meet the requirements of the Tax Act applicable to the segregated current pension assets.**

**22.4 The Trustees may create such Pension Benefit Accounts in respect of pensions payable under this Deed as the Trustees determine.**

- 22.5** The Trustee may take any action not prohibited by the Tax Act or the SIS Act to revert segregated assets so that they are no longer segregated and with the consent of the relevant Member where required.

### **Valuation of the Fund and Allocation of Profits or Loss**

#### **23.1 Valuation**

The Trustee must at the end of each Financial Year if required by the Superannuation Conditions and may at any time value the assets and liabilities of the Fund and any surplus or deficiency including unrealised gains or losses revealed by such valuation must be separately credited or debited to the profit and loss account of the Fund. For the purpose of effecting a valuation the Trustee has an absolute discretion in selecting the valuation basis for any asset or liability provided that such basis must not be one which causes the Fund to fail to satisfy the Superannuation Conditions.

#### **23.2 Profit or loss distribution**

The Trustee may in their absolute discretion determine the amount of profit or loss of the Fund that must be credited or debited to and amongst the Member Accounts and any other accounts that the Trustee nominates in such proportions and such manner as the Trustee decides and may set formulae or interest rates for this purpose provided that the Trustee must in the exercise of their discretions under this paragraph act in a manner that is in accordance with the Superannuation Conditions. If the Trustee maintain reserves the Trustee may first determine what amount of the profit or loss is to be allocated to the Reserve Accounts, and the balance (if any) credited or debited in accordance with this Deed.

#### **23.3 Other debits**

Subject to the Tax Act and the Superannuation Conditions, the Trustee may debit any accounts of the Fund in respect of taxation liabilities or any other outgoings in such manner as the Trustee determines.

### **Contributions**

#### **24.1 Employer contributions**

Each Associated Employer, if any, must contribute to the Fund pursuant to an arrangement between such Employer and the Trustee in respect of the Employer's Employee who is a Member of the Fund.

#### **24.2 Member contributions**

Subject to the Superannuation Conditions and this Deed, each Member may contribute to the Fund (whether in specie or otherwise, subject to the Superannuation Conditions) such amount or otherwise as is agreed between the Member and the Trustee.

#### **24.3 Acceptance of contributions-General**

Despite this clause 24, the Trustee may accept any contribution from any contributor unless the Act or Superannuation Conditions do not permit it or if such acceptance would cause the fund not to comply with the SIS Act or fail to satisfy the provisions of the SIS Act applicable to self managed funds.

**24.4 Acceptance of contributions**

- (1) Without limiting sub-clause 24.3, the Trustee may accept contributions that are made in respect of a Member in accordance with the following table and regulations (2), (3) and (6) of SIS Regulation 7.04.

<b>Item</b>	<b>If the Member ...</b>	<b>the fund may accept ...</b>
1	is under 65	contributions that are made in respect of a Member.
2	is not under 65, but is under 70	contributions that are made in respect of a Member that are (a) mandated employer contributions; or (b) if the Member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made: (i) employer contributions (except mandated employer contributions); or (ii) Member contributions
3	is not under 70, but is under 75	contributions that are made in respect of the Member that are: (a) mandated employer contributions; or (b) if the Member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made - contributions received on or before the day that is 28 days after the end of the month in which the Member turns 75 that are: (i) employer contributions (except mandated employer contributions); or (ii) Member contributions made by the Member.
4	is not under 75	mandated employer contributions

- (2) In addition to sub-clause 24.4 (1) (SIS Regulation 7.04(1)), the Trustee must not accept any Member contributions if the Member has not quoted (for superannuation purposes) his or her tax file number to the fund.
- (3) In addition to sub-clause 24.4 (1) (SIS Regulation 7.04(1)), the Trustee must not accept any fund-capped contributions in a financial year in respect of a Member that exceed:
- (a) if the Member is 64 or less on 1 July of the financial year – three times the amount of the non-concessional contributions cap (as defined in the SIS Regulations); or
  - (b) if the Member is 65 but less than 75 on 1 July of the financial year – the non-concessional contributions cap (as defined in the SIS Regulations).
- (4) If the Trustee receives an amount in a manner that is inconsistent with sub-paragraph (1), (2) or (3):
- (a) the fund must return the amount to the Member within 30 days of becoming aware that the amount was received in a manner that is inconsistent with sub-paragraph (1) or (2); and
  - (b) the Trustee may, and is empowered to comply with the provisions of SIS Regulation 7.04(4)(b).

- (5) If the Trustee complies with SIS Regulation 7.04(4) (See paragraph 24.4 (4)), the fund is taken not to have contravened the Act or the SIS Regulations in relation to the acceptance of the amount or in relation to the return of the money to the Member.
- (6) The Trustee may accept contributions in respect of a Member if the Trustee is reasonably satisfied that the contribution is in respect of a period during which, under an item in the table above (SIS Regulation 7.04(i)), the fund may accept the contribution in respect of that Member, even though the contribution is actually made after that period.
- (7) In this provision 24.4:  
**non-concessional contributions cap** means the amount mentioned in subsection 292-85 (2) of the *Income Tax Assessment Act 1997*.  
**quoted (for superannuation purposes)** has the same meaning as in the *Income Tax Assessment Act 1997*.  
**tax file number** has the meaning given by section 299W of the SIS Act.

#### 24.5 Child Contributions

The Trustee may accept child contributions in respect of a child if permitted by the Act.

#### 24.6 (a) Contributions in Cash or Assets

Any contribution made by a Member or an Associated Employer must be made to the Trustee within the period in respect of which it is paid either in cash or by transfer of an asset or assets provided that the assets transferred must be investments permitted by this Deed. Any such transfer of an asset must be made upon the terms and conditions required by the Superannuation Conditions, and must not be made if the Trustee or an agent or delegate of the Trustee is prohibited by the Superannuation Conditions from acquiring the asset.

#### (b) No Obligation to Contribute

In the absence of any agreement to the contrary neither a Member nor an Employer are under any obligation to make a contribution to the Fund and a Member may remain a Member of the Fund notwithstanding a contribution is not made in respect of that Member in respect of any year.

#### (c) Ineligible Contributions

If the Trustee at any time ascertains that any contribution has been accepted in breach of the provisions of the Act, the Trustee must refund such contribution within any time period which may be required by the Act, less any deductions the Trustee is permitted to make.

#### (d) Non-acceptance of Contributions

The Trustee may, subject to the Act and the Superannuation Conditions, return any contribution even if such contribution is permitted to be accepted by the Trustee under the SIS Act.

#### 24.7 Allocation of Contributions

Within 28 days (or within a longer period that is reasonable in the circumstances if within 28 days it is not reasonably practicable to so allocate or such other period as the Commissioner permits) of the end of the month of receipt of a contribution the Trustee must allocate the contribution to a Member of the fund.

### **Spouse contributions – splitting amounts**

#### **24.8 Application to roll over, transfer or allot an amount of contributions**

- (1) Subject to the SIS Regulations and in particular Division 6.7, a Member may, in a financial year, apply to the Trustee to roll over, transfer or allot an amount of benefits, for the benefit of the Member's spouse, that is equal to an amount of the splittable contributions made by, for, or on behalf of the Member in:
  - (a) the last financial year that ended before the application; or
  - (b) the financial year in which the application is made – where the Member's entire benefit is to be rolled over or transferred in that year.
- (2) The applicant must specify, in the application, the amount of the benefit from the following:
  - (a) the Member's taxed splittable contributions;
  - (b) the Member's untaxed splittable contributions;that the Member seeks to split for the benefit of the Member's spouse.

#### **24.9 Decision on application**

- (1) The Trustee may accept an application only if it is made in accordance with the SIS Regulations.
- (2) If the Trustee accepts an application in accordance with this provision the Trustee must, subject to the Regulations, and in any case within the period prescribed by the SIS Regulations, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.
- (3) The Trustee is permitted to do all such things as may be necessary to give effect to these provisions and words in these provisions have the same meaning as contained in Division 6.7 of the SIS Regulations.

### **Benefits**

#### **25.1 Maximum Benefits**

Subject to the Superannuation Conditions, unless the Trustee otherwise resolves, the liability (if any) of the Trustee to make benefit payments may not exceed the lesser of:-

- (a) the benefits provided under the Deed in respect of the Beneficiary; and
- (b) the total balances of the relevant Member Accounts and any insurance proceeds received by the Trustee in respect of the Member.

#### **25.2 Application of benefits**

The benefits payable to or in respect of Beneficiaries must be paid or applied to or for the benefit of such one or more of those Beneficiaries in the form of lump sums, pensions or annuities as provided in this Deed and subject to the Superannuation Conditions and this Deed, in such manner as the Trustee may in their absolute discretion decide.

#### **25.3 Member's request**

Subject to the Superannuation Conditions, when a benefit is payable as a pension the Member may by written notice to the Trustee request payment of such benefit as an immediate or deferred lump sum and while the Trustee will take due consideration of a request, the Trustee's decision, with respect to the form of any benefit payment, will be final.

#### 25.4 Binding Nominations

- (a) Subject to the Superannuation Conditions, the Trustee consents to the ability of a Member to make a binding nomination to pay benefits to a designated Dependant and the Trustee agrees to give effect to such notice.
- (b) If the Trustee is unable to lawfully act upon the Member's notice under this sub-clause 25.4 then the Trustee may pay the relevant benefit to the Member's legal personal representative or to the Member's Dependants or any one or more of them and in such proportions as the Trustee in their absolute discretion determines, not being inconsistent with the SIS Act.
- (c) Subject to paragraph 25.4(i) a Member may require the Trustee to provide any benefits in respect of that Member, on or after the death of that Member, to the legal personal representative or a Dependant of the Member if the Trustee gives the Member information under paragraph 25.4(d).
- (d) The Trustee must give to the Member information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the right of that Member to require the Trustee to provide the benefits.
- (e) Subject to paragraph 25.4(i) the Trustee must pay a benefit in respect of the Member, on or after the death of that Member, to the person or persons mentioned in a notice given to the Trustee by that Member if:
  - (i) the person, or each of the persons, mentioned in the notice is the legal personal representative or a Dependant of that Member; and
  - (ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice; and
  - (iii) the notice is in accordance with paragraph 25.4(g); and
  - (iv) the notice is in effect.
- (f) A Member who gives notice under paragraph 25.4(e), may:-
  - (i) confirm the notice by giving to the Trustee a written notice, signed and dated by the Member to that effect; or
  - (ii) amend or revoke the notice by giving to the Trustee notice, in accordance with paragraph 25.4(g) of the amendment or revocation.
- (g) For the purposes of paragraphs 25.4(e)(iii) and 25.4(f)(ii), the notice:-
  - (i) must be in writing; and
  - (ii) must be signed and dated by the Member in the presence of 2 witnesses, being persons:-
    - i. each of whom has turned 18; and



- ii. neither of whom is a person mentioned in the notice; and
- (iii) must contain a declaration signed and dated by the witnesses stating that the notice was signed by the Member in their presence.
- (h) Unless sooner revoked by the Member, a notice under paragraph 25.4(e) ceases to have effect at the end of the period of 3 years after the day it was first signed or last confirmed or amended by the Members.
- (i) If an item of information given by a Member in a notice under paragraph 25.4(e) is not sufficiently clear to allow the Trustee to pay the benefit, the Trustee must seek from the Member a written statement to clarify the item as soon as practicable after the Trustee receives the notice.

**25.5 Non-lapsing death benefit nomination - Death Benefit requested rule**

If the Trustee is given a written notice by a Member requesting that benefits be paid following the death of that Member to a person or persons or other permitted payees then the Trustee must:

- (a) by written resolution, accept the terms of the Member's notice; or
- (b) give written notice to the Member of a proposed rule in respect of the death benefit specifying the terms thereof in accordance with the Members request.

AND on the date of that resolution referred to in (a) or the date of the written acceptance by the Member of the death benefit rule referred to in (b), the Trustee is bound by those terms unless and until that Member and the Trustee otherwise in writing agree or until a later binding nomination in accordance with the SIS Act is given to the Trustee or a later non-lapsing nomination is given effect under (a) or (b).

**25.6 Preserved Benefits**

- (a) Any benefit which is subject to preservation or has been preserved under the Superannuation Conditions, an agreement made by the Trustee or this Deed, must not be paid to or in respect of the Member at a date earlier than allowed from time to time under the Superannuation Conditions.
- (b) The Trustee may transfer any preserved benefit to another superannuation fund nominated by the Member, an approved deposit fund nominated by the Member, a deferred annuity nominated by the Member or such other superannuation entity as the Superannuation Conditions allow.
- (c) If the Fund holds benefits that were not the subject of preservation prior to the date of or the date of adoption or application of this Deed then nothing in this Deed operates in a way that has the effect of preserving those benefits unless the Superannuation Conditions require it.

**25.7 Member otherwise has no interest**

Except as provided in this Deed and subject to the Superannuation Conditions, a Member, Dependant or Personal Representative has no right to or interest in the Fund.

**25.8 Trustee to determine amount to pay benefits**

Subject to the Act, on the happening of an event as the result of which there arises an absolute or contingent right to the payment of a benefit in accordance with this Deed to or in respect of a Beneficiary either immediately or at some future date the Trustee must determine the amount required to meet that liability and any balance of the Member Accounts in excess of that amount may be transferred to the Forfeited Benefits Account subject to paragraph 26.1(b) unless the Trustee otherwise resolves.

**25.9 Member to provide evidence of entitlement**

The payment of any benefit is subject to the person claiming the same producing such evidence, doing such acts and executing such documents as the Trustee may reasonably require and the Trustee may postpone the payment of any benefit until the requirements of this paragraph have been met.

**25.10 Trustee may transfer assets in specie**

Subject to the Superannuation Conditions, 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 benefit in lieu of payment of the same in money. The Trustee may take into account such associated costs, taxes or other expenses of such transfer as they think fit and make adjustments accordingly.

**25.11 Unclaimed monies**

If the Trustee cannot find a person entitled to a benefit then that benefit or part of that benefit may be paid or otherwise dealt with by the Trustee in such manner as the Superannuation Conditions permit.

**25.12 Unpaid benefits**

In the circumstances prescribed by the Superannuation Conditions, the Trustee may pay an unpaid benefit to an eligible rollover fund, or to the Commissioner or other body prescribed by the Superannuation Conditions.

**Forfeited Benefits Account**

**26.1 Forfeited benefits account may be kept**

- (a) The Trustee may keep an account for the receipt of amounts forfeited from Member Accounts and any other credit balances that cannot be otherwise allocated under the provisions of the Deed. The account is to be known as the Forfeited Benefits Account.
- (b) A benefit may not be forfeited if that would result in the fund failing to comply with the definition of a self managed superannuation fund in the SIS Act or the Superannuation Conditions.

**26.2 Application of forfeited benefits**

The Trustee may in their absolute discretion apply amounts held in the Forfeited Benefits Account in the manner and to the purposes permitted by the Superannuation Conditions and, if permitted, these may include:

- (a) welfare benefits to assist in events of financial hardship, sickness, accident or other misfortune causing hardship;

- (b) supplementary benefits for retired Members;
- (c) additional benefits for current Members on an equal basis, or on a pro rata basis among all Members or, among Members on the basis of economic needs;
- (d) payment of administrative expenses of the Fund;
- (e) payment of a Member's own contribution to relieve hardship;
- (f) payment to an Employer in recompense for loss or damage as the consequence of employee misconduct;
- (g) payment to an Employer in the form of assessable income.

### **26.3 Equalisation Account**

- (a) The Trustee may at any time establish an Equalisation Account of the Fund and may transfer to the credit of that account any forfeited benefits or any amounts from an income account in the Fund.
- (b) Any monies held in the Equalisation Account do not form part of any Member Account and any income derived by the Fund on the monies held in the Equalisation Account is to be credited to the Equalisation Account.
- (c) The Equalisation Account is to be used by the Trustee in accordance with any applicable investment strategy relating to reserves to stabilise the investment earnings of the Fund and to provide for such contingencies as the Trustee considers appropriate.
- (d) This sub-clause 26.3 is subject to the Superannuation Conditions.

### **26.4 Lien**

Despite any other provision contained in this Deed to the contrary, though subject to the Superannuation Conditions, the Trustee has at the date of payment of a benefit to a Member a lien over that benefit in respect of:-

- (a) all amounts owed by the Member to the Fund; and
- (b) any loss or expense incurred by the Trustee in consequence of the Member's fraud, dishonesty, misappropriation or other misconduct in respect of the Fund including the costs to the Trustee of recovering the same where the loss, expense or costs have been quantified and constituted a debt owing by the Member to the Trustee in their capacity as Trustee.

### **26.5 Certificate**

A certificate signed by the Trustee stating the amount of the lien over the Member's Benefit claimed by the Trustee is prima facie evidence in the hands of the Trustee against all claimants of the amount owing to the Fund under the preceding sub-paragraph and is sufficient authority to the Trustee to retain in the Fund out of the amount of benefit to which the Member would otherwise be entitled the amount of such lien and the balance, if any, of the benefit which is not so retained in the Fund must be paid to or in respect of the Member.

## **Transfer of Benefits**

### **27.1 Trustee to make arrangements with prior employer and Trustee**

- (a) Subject to the Superannuation Conditions the Trustee may at the request of an Employee or Member and with the consent of his or her Employer, if any, make such arrangements as they think proper with that previous Employer or the Trustee of any other superannuation fund or entity for the payment or transfer to the Fund of monies or assets and other rights and benefits of and arising in relation to the membership by such person in such other superannuation fund or entity.
- (b) The Trustee may make arrangements about any matter in relation to such payment or transfer which in their opinion is necessary and may also make such arrangements as are necessary to enable such Employee to be admitted to membership of the Fund, if that person is not a Member.
- (c) A payment or transfer may be made to the Trustee of a successor fund without the consent of the relevant Member if permitted by the SIS Act.

### **27.2 Transferred amounts to be held according to Deed**

The Trustee must hold any monies or assets so paid or transferred to them from another superannuation fund according to the terms and conditions of this Deed and subject to paragraph 21.2.

### **27.3 Application of transferred amounts**

On any such payment or transfer of monies or assets -

- (a) the amount of the entitlement of the Member concerned is to be credited to his or her Member Account in the manner resolved between the Member, the Trustee and the Trustee of the Fund from which the Member is transferring;
- (b) the amount which by the terms and rules of such other superannuation fund is required to be preserved is to be identified and held by the Trustee as a Preserved Portion under this Deed.
- (c) except to the extent required by the Superannuation Conditions, the money or assets so transferred must not be subject to preservation. Where the Fund holds benefits that were not the subject of preservation in a prior Fund then nothing in this Deed is to have the effect of preserving those benefits unless the Superannuation Conditions require it.

### **27.4 Application of benefits on Member leaving Fund**

The money and assets comprising any benefit payable to a Member on leaving the Fund may with the approval of such Member be paid or transferred to or invested in (as the case may be):-

- (a) another superannuation fund nominated by the Member of which such Member is or intends to become a Member and which satisfies the Superannuation Fund Conditions; or
- (b) an approved deposit fund nominated by the Member which satisfies the Approved Deposit Fund Conditions set out in the Superannuation Conditions; or

- (c) a deferred annuity nominated by the Member which does not pay benefits except in circumstances in which by the Superannuation Conditions or by this Deed benefits are payable to that person;
- (d) such other superannuation entity as the Superannuation Conditions permit.

The receipt of the Trustee of that other fund or scheme or the corporation issuing the policy is a complete discharge to the Trustee in respect of any money or assets so paid or transferred.

#### **27.5 Application of preserved benefits**

The money and assets comprising any Preserved Portion of a benefit payable to a Member at a date after his or her leaving the Fund may be:

- (a) retained in the Fund; or
- (b) transferred to a superannuation entity provided that such transfer is not inconsistent with the Superannuation Conditions.

The receipt of the Trustee of that other fund or scheme or the corporation issuing the policy is a complete discharge to the Trustee in respect of any money or assets so paid or transferred.

#### **Disclosure of Information**

- 28. The Trustee must provide such information, reports or otherwise to such persons, superannuation entities or otherwise as may be necessary to comply with the Superannuation Conditions.

#### **Notices**

- 29. Notices may be given by the Trustee to Members and Dependents either personally or by sending the same by pre-paid letter posted to the address last known to the Trustee or the address last known to the Employer.

#### **Principal and Associated Employers**

##### **30.1 Approval of Associated Employers**

Subject to the Superannuation Conditions the Trustee may permit any company, person or firm as an Associated Employer to contribute to the Fund. Unless inconsistent with the Superannuation Conditions, an Associated Employer is deemed to be bound by the Deed on such payment of a contribution. The payment by an Associated Employer of a contribution in respect of a Member to the Trustee is sufficient acknowledgement by the Associated Employer of being so bound. The Trustee may require the Associated Employer to make application to join in a form approved by the Trustee.

##### **30.2 Cessation**

Subject to the Superannuation Conditions an Employer ceases to be an Associated Employer on:-

- (a) The Employer ceasing to be an Employer of any Member; or
- (b) The Employer determining to cease contributing to the Fund; or
- (c) The Employer's becoming bankrupt or being placed into liquidation or receivership or ceasing to carry on a business; or

- (a) firstly, in the payment of liabilities in respect of the administration and other costs associated with the winding-up proceedings;
- (b) secondly, in the discharge of all liabilities other than liabilities in respect of benefits payable to or in respect of Beneficiaries;
- (c) thirdly, in securing the minimum guaranteed benefits of Members;
- (d) fourthly, in securing for each Member the amounts standing to the credit of -
  - (i) their Member Contribution Accounts;
  - (ii) their Employer Contribution Accounts; and
  - (iii) any Preserved Portion of their Member Accounts in excess of the amount secured under (i) and (ii) above; and
- (e) lastly, in the distribution of any remaining balance to such of the Beneficiaries, and to any of the Employers in such proportions as in the opinion of the Trustee is appropriate in the circumstances and in accordance with the Superannuation Conditions.

### **32.3 Subject to preservation**

Subject to the Superannuation Conditions and in so far as it is within the power of the Trustee to so do, in dealing with the benefit of any Member in a winding up of the Fund the Trustee must observe all the provisions of this Deed relating to the transfer, payment and preservation of benefits and must not act otherwise than as permitted by those provisions.

### **Complaints**

#### **33. Establishment of complaints procedure**

If required by the Superannuation Conditions, the Trustee will establish such reasonable procedures under which enquiries and complaints may be dealt with.

### **Payment of Benefits**

#### **34. Mode of Payment of Benefits**

Benefits shall be paid in accordance with clause 25 of this Deed.

#### **35.1 Benefits Payable**

Subject to the Act, the Trustee may pay any benefit permitted to be paid under the SIS Act and under this clause 35, subject to such conditions set out in this Deed or in the Act and subject to any Cashing Restrictions, to the Member or if the Member is unable to manage his or her own affairs, any of the Member's Dependants, and in any proportions as the Trustee, in its absolute discretion, determines. The Trustee may pay a Member's Benefit upon:

- (a) retirement before reaching preservation age; or
- (b) reaching preservation age and retiring; or
- (c) reaching age 65; or
- (d) permanent incapacity of the Member; or
- (e) terminal medical condition of the Member, as defined in Regulation 6.01A; or

- (f) severe financial hardship of the Member, which payment must first be approved by the Commissioner if the SIS Act requires; or
- (g) compassionate grounds, as defined in SIS Regulation 6.19A; or
- (h) satisfaction of any other condition of release required to be satisfied under the SIS Act; or
- (i) if the proceeds of a temporary total disablement insurance policy on the life of the Member becomes payable, the proceeds of the policy may be paid to the Member if the SIS Act permits.

### 35.2 Benefit payable on death

- (a) If a Member dies before payment or commencement of payment of a benefit under this Deed, the amount of the Member's Benefit will be held by the Trustee on trust, subject to this clause 35 and the SIS Act, for the benefit of one or more of the Member's Dependants in the shares and proportions as the Trustee, in its absolute discretion, determines.
- (b) The Trustee will take account of any nomination of beneficiaries made by the Member, but will not be bound by it unless required to do so under clause 25. Subject to the SIS Act, in the discretion of the Trustee, the benefit payable will be paid by lump sum or pension or a combination of both.
- (c) If the Trustee is unable to establish within 6 months after the Member's death, or such other period as may be permitted by the Act, that there are any Dependants, the Member's Benefit will be paid to the Member's legal personal representative.
- (d) If, after making inquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustee may, if permitted by the Act:
  - (i) pay the benefit to a person or persons selected by the Trustee; or
  - (ii) treat the benefit as a forfeited benefit and apply it in the manner provided for in the Act or under this Deed; or
  - (iii) pay the benefit to a Reserve Account in the Fund.

### 35.3 Benefit payable on temporary incapacity

Subject to the Act and the provisions of this Deed, if a Member becomes subject to Temporary Incapacity, the Trustee may pay to the Member a non-commutable income stream for the purposes of continuing (in whole or in part) the gain or reward which the Member was receiving before the incapacity and only for a period not exceeding the period of incapacity from employment of the kind the Member engaged in immediately before the temporary incapacity.

### 35.4 Benefit payable to an Employer-Sponsored Member on termination of employment before retiring age

Subject to the Superannuation Conditions, if the employment by the employer of an Employer-Sponsored Member is terminated before the retiring age otherwise than in the circumstances of death, permanent incapacity, a terminal medical condition or temporary incapacity, the Member's Benefit may be paid to the Member if the Member has attained the age prescribed in the Act as being the preservation age for that Member and is retiring from the workforce. If the Member has not attained the age prescribed in the Act as being the preservation age for that Member or, having attained that age, has not retired from the workforce, the Trustees will pay or commence to pay the Member only that part of the benefit payable which is not a preserved benefit.

- (d) The Employer giving written notice of ceasing to be an Associated Employer to the Trustee and to each Member who is employed by that Employer; or
- (d) The Trustee giving written notice of cessation to the Associated Employer; or
- (e) The first date otherwise required by the SIS Act.

**30.3 Membership unaffected by Employer cessation**

A Member who is an employee of an Employer that has ceased to be an Associated Employer does not by reason of that event cease to be a Member.

**30.4 Appointment and cessation of Principal Employer**

- (a) Subject to the Superannuation Conditions, if the Fund has a Principal Employer, it may cease to occupy that role by giving written notice to the Trustee of that fact and that cessation takes effect from the date that notice is so given.
- (b) Another Employer of a Member may become the Principal Employer by written agreement of the Trustee and the Members.

**Rights Not Restricted**

**31. Workers compensation**

Nothing contained in this Deed is to affect the right of a Member or their Personal Representative or other person to claim damages or compensation at Common Law or under Workers' Compensation Acts or any other Statute in force governing compensation to a Member injured or dying from any accident arising out of and in the course of their employment with the Employer and any benefits payable hereunder are not to be reduced by reason of any payment that may be made in respect of such damages or compensation.

**Winding up of Fund**

**32.1 Winding up**

Subject to the Superannuation Conditions and if so required, with the Trustee's consent, the Fund is to be wound up by the Trustee as at a date determined by them on the occurrence of any of the following events:-

- (a) if there are no assets of the Fund; or
- (b) if there are no Beneficiaries of the Fund and no Associated Employers and no Principal Employers; or
- (c) if in respect of each Associated Employer and Principal Employer, if any, an order is made or a resolution is passed for the winding up of such Employers and there are no Beneficiaries.
- (d) if the Trustee resolves to wind up the Fund.

**32.2 Priorities**

Subject to the Superannuation Conditions and if so required, with the Trustee's approval, the assets of the Fund on its winding up are to be applied in the following order of priority and for the following purposes to the extent to which those assets will allow:-



### **35.5 Deferment of payment of benefit**

Subject to the Superannuation Conditions, the payment of any benefit payable under clauses 35.4 which is not a preserved benefit may, at the request of the Member and with the consent of the Trustee, be deferred until the Member requests payment of the benefit.

### **35.6 Payment of benefits to minors**

Subject to the Superannuation Conditions, where a person to whom benefits are payable is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid will be a complete discharge to the Trustee in respect of that benefit.

### **35.7 Deduction of income tax**

The Trustee may deduct from any benefit payable the amount of any tax that is calculated by the Trustee to be payable in respect of that benefit and will pay any amount deducted as may be required by law.

## **Pension Conditions**

### **36.1 Trustee's discretion**

Subject to clauses 34 and 38, where a benefit is payable under clause 35 or where a preserved benefit is payable by way of pension, the Trustee will, in its absolute discretion, determine the amount of the pension and the manner in which and the period for which it is paid. The pension must be paid at least annually. The annual amount of the pension cannot be greater than any maximum nor less than any minimum amount stated in the Act. The pension must be paid on a basis that complies with the requirements of the Act.

### **36.2 Cessation of payments**

When the Member's Benefit is reduced to nil, the pension payable under these rules ceases to be payable and the person who was receiving the pension ceases to be entitled to any further benefits and, if a Member, ceases to be a Member.

### **36.3 Commutation of pension**

Subject to the Act, the recipient of a pension may commute the whole or part of a pension to a lump sum payment, by applying in writing to the Trustee. The commutation must comply with the requirements of the Act.

### **36.4 Pension payable to Reversionary Beneficiary**

If a Member in receipt of a Pension which is permitted to be paid to a Reversionary Beneficiary under the Superannuation Conditions dies, the Trustee may pay the deceased Member's Benefits as a pension under the same conditions as the deceased Member's pension, to any Reversionary Beneficiary.

### **36.5 Pension payable to spouse on death of Member**

(a) If a Member to whom a pension is being paid dies and is survived by a spouse, the Trustee may determine to pay to the spouse until the spouse's death or until the Member's Benefit is reduced to nil (if that occurs before the spouse's death), a pension of the amount as the deceased Member's spouse and the Trustee agrees from time to time or, if there is no agreement, of any amount and on terms and conditions as the Trustee determines. If

however the pension has to be paid on some other basis for the fund to comply with the Act, it must be paid on that basis.

- (b) The annual amount of the pension will not be greater than any maximum nor less than any minimum amount stated in the Act.
- (c) A pension payable to a Member's spouse pursuant to this sub-clause 36.5 will commence on the date of the Member's death.

#### **36.6 Payment to Member's dependants**

- (a) If a Member in receipt of a pension who does not have a spouse, or to whose spouse a pension is not paid under sub-clause 36.5 dies, or if a Member's spouse to whom a pension was payable under sub-clause 36.5 dies, the balance of the Member's Benefit (if any) will be paid in a lump sum to such of the Member's Dependants as the Trustee, in its absolute discretion, determines.
- (b) If payment of part or all of the benefit does not comply with the requirements of the Act, the proportion of the benefit that does not so comply will be treated as a forfeited benefit and will be applied in the manner stated in paragraph (d) of this rule.
- (c) If the Trustees are unable to establish within the time required by the SIS Act after the death of a Member or the Member's spouse (if a pension was being paid to the Member's spouse) that there are any Dependants, the benefit payable under this sub-clause 36.6 will be paid to the Member's or the Member's spouse's legal personal representative in the discretion of the Trustees. If a grant of probate or letters of administration in respect of the estate of the deceased Member or the deceased Member's spouse is not made within 3 years of his or her death (or any longer period as the Trustees determine as the SIS Act provides), the benefit payable under this rule will be treated as a forfeited benefit and applied in the manner stated in paragraph (d) of this rule, subject however to the SIS Act.
- (d) A forfeited benefit will be applied in the manner provided for in the Act or, if there is no provision, will be applied by the Trustees as a forfeited benefit.

#### **36.7 No assignment or encumbrance**

- (a) Pensions payable from the fund cannot be assigned or otherwise transferred by the person receiving the pension (except to the extent provided for in sub-clause 36.4 or 36.5) and cannot be mortgaged or encumbered in any manner.
- (b) Neither the capital value (if any) of any pension payable from the fund nor any income from it, may be used as a security for a borrowing.

#### **36.8 Annuities**

The Trustee may, in its absolute discretion (including where an old-age pension is required to be paid), provide pensions payable under this Deed by applying a Member's Benefit to the purchase of an annuity that meets the requirements of the Act.

#### **36.9 Imputation credits**

Subject to the Superannuation Conditions, the Trustee may, in its absolute discretion, debit amounts to the accounts of Members to whom current pensions are not being paid and credit

corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

**37. Benefit payable in other circumstances**

The Trustee may, but only if consistent with the SIS Act as it applies to the Fund, pay part or all of a Member's Benefit to a Member, or such other person as may be entitled to that benefit.

**Pensions**

**38.1 Interpretation**

- (a) The Trustee may by resolution determine to pay the following types of pension and in accordance with the following provisions, however they are subject to the Superannuation Conditions and to the SIS Act.
- (b) The Trustee is not bound to pay the pensions referred to in this rule however if they do so resolve then the Trustee must comply with the applicable provisions and those provisions apply despite the provisions of any other rule, unless the Trustee otherwise determines.
- (c) Where a provision of this clause 38 refers to this Deed and where these governing rules do not specify or do not sufficiently specify the matter to which the provision refers, the Trustee may, subject to the SIS Act, determine that matter by resolution, whether or not the matter refers to the size of the payments of a benefit in a year being fixed, variations to allow payments under a Payment Split, the amount of any reversionary benefit or determination as to who is entitled to a reversionary benefit or reversionary pension or the amount of same or anything else. Any such resolution of Trustee shall be deemed to be part of and included in this Deed.
- (d) Nothing in this Deed prevents continued payment of a pension already commenced prior to the date of this Deed if the SIS Act and Superannuation Conditions permit the continued payment of that pension.
- (e) To the extent that the provisions in this rule are inconsistent with the SIS Act, they are varied and are deemed to be included in this clause 38.
- (f) Subject to the SIS Act the Trustees may pay any other pension that is not prohibited by the SIS Act and the Superannuation Conditions.

**38.2 Paying Pensions**

- (a) A benefit may be paid as a pension under sub-clause 38.3 or 38.4 and if:
  - (i) it meets the standards of SIS Regulation 1.06(9A) (see sub-clause 38.3); and
  - (ii) if SIS Regulation 1.06(9A)(a) applies, the rules also meet the standards of SIS Regulation 1.07D; and
  - (iii) if SIS Regulation 1.06(9A)(b) applies, the rules also meet the standards of SIS Regulation 1.07B.
- (b) A Member may in writing request the Trustee to pay a pension to the Member that is an Allocated Pension or a Transition to Retirement Income Stream under sub-clause 38.3 or 38.4 and if the Member is entitled to be paid such a pension under the SIS Act at the date of the request, the Trustee must pay the Member's Benefits in accordance with the request, subject to the Superannuation Conditions.
- (c) The Trustee may declare in writing a rule specifying the terms of a pension paid or to be paid in accordance with the SIS Regulations and such rule shall apply to that pension and

the recipient's consent must be obtained if required by the SIS Act or the Superannuation Conditions. Without limiting the form of writing such writing may include a deed signed by the Trustee and the Member or other applicable recipient.

- (d) A Member may cancel a pension by a request in writing to the Trustee at any time.

### 38.3 Account Based Pensions

- (1) This pension (*the pension*) meets the standards of SIS Regulation 1.06(9A) if it is paid at least annually, and:
- (a) for a pension in relation to which there is an account balance attributable to the beneficiary — the total of payments in any year (including under a splitting order) is at least the amount calculated under clause 1 of Schedule 7 of the SIS Regulations; and
  - (b) for a pension that is not described in paragraph (a):
    - (i) both of the following apply:
      - (A) the pension cannot have a residual capital value, commutation value or withdrawal benefit greater than 100% of the purchase price of the pension; and
      - (B) the total of payments in any year (including under a splitting order) is at least the amount calculated under clause 2 of Schedule 7 of the SIS Regulation; or
    - (ii) each of the following applies:
      - (A) the pension is payable throughout the life or for a fixed term of years that is no greater than the difference between the beneficiary's age on the commencement day and the age of 100;
      - (B) there is no arrangement for an amount (or percentage of the purchase price) to be returned to the recipient when the payment of the pension ends;
      - (C) the total payments from the pension in the first year (including under a Payment Split) is at least the amount calculated under clause 2 of Schedule 7 of the SIS Regulation;
      - (D) the total of payments from the pension in a subsequent year cannot vary from the total of payments in the previous year unless the variation is as a result of an indexation arrangement or the transfer of the pension to another person;
      - (E) if the pension is commuted, the commutation amount cannot exceed the benefit that was payable immediately before the commutation; or
    - (iii) the rules meet the standards of regulation 1.06(2); and
  - (c) the pension is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and
  - (d) the capital value of the pension and the income from it cannot be used as a security for a borrowing.
  - (e) In this clause:

**"indexation arrangement"**, in relation to a pension, means an arrangement specified in the rules for the provision of the pension that:

    - (a) either:
      - (i) results in the total amount of pension payments in each year increasing by the same percentage factor; or
      - (ii) results in the total amount of pension payments in each year being adjusted in line with movements in:
        - (A) the Consumer Price Index; or
        - (B) an index of average weekly earnings published by the Australian Statistician; and

- (b) ensures that, unless APRA otherwise approves, an adjustment is made at least annually to the amount of the pension payments.

#### 38.4 Transition to Retirement Income Streams

This is a pension the rules of which:

- (i) are rules
  - (A) to which regulation 1.06 (9A) applies; and
  - (B) that meet the standards of regulation 1.06 (9A); and
- (ii) allow total payments (including payments under a Payment Split) made in any financial year to amount to no more than 10% of the pension account balance.
  - (A) on 1 July in the financial year in which the payment is made; or
  - (B) if that year is the year in which the pension commences – on the commencement day; and
- (iii) comply with paragraph (b) of the definition of *non-commutable allocated pension* in SIS Regulation 6.01, as if it were such a pension.

#### 38.5 Periods when Beneficiary may not receive benefits

A benefit is not taken not to meet the provisions of SIS Regulation 1.06 by reason only that payments of benefit to the Beneficiary have been properly suspended during a period when the Beneficiary is the holder of a paid public office.

#### 39. Pension Reserves

Subject to the Act, where it considers it appropriate the Trustee may:

- (a) obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves in accordance with this clause 39, or any other relevant matter;
- (b) establish pension reserves in relation to the funding of pension obligations relating to particular beneficiaries;
- (c) where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the beneficiary to whom the pension benefit related and that Beneficiary's dependants.

#### 40. Death benefits

- (a) This clause applies if the terms of a particular pension do not provide for the consequences for payment of the pension on the death of the pension recipient.
- (b) Where this clause applies, then unless the Trustee otherwise determines and subject to the Act, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with any binding nomination or if there is no binding nomination, as the Trustees determine.

**41. Deduction for detrimental payments after Member's Death**

For the purposes of Section 295-485 of the *Income Tax Assessment Act 1997*, if a Member dies and a benefit is paid as a consequence, the Trustee may do all such things and make such allowances or payments as may be necessary or desirable to give to the recipient of that benefit, the benefit of any deduction permitted under the Section.

**42. Conversion of Pensions**

At the request of a Member, Pensioner or Reversionary Beneficiary, or their legal personal representative, as may be applicable and subject to the SIS Act and the Superannuation Conditions, the Trustee may:

- (a) convert any pension whether an allocated pension or any other type of pension to an account based pension or any other pension permitted to be commenced under the SIS Act and any such pension may be so converted with or without commuting the pension that is being converted.
- (b) cease payment of a pension;
- (c) return the remainder of any pension account balance or other permissible benefit amounts to the Member's accumulation account for the purposes of commencing a new pension or other permissible benefit;
- (d) merge, consolidate or commute one or more pension streams, pension account balances or other permissible benefit amounts into the Member's accumulation account or accounts;
- (e) take such other action as may be necessary or desirable as determined by the Trustee to give full effect to this provision.

## REFERENCE SCHEDULE

Name of Fund:-

Borthwick Super Fund

Parties:-

(a) Trustee(s):-

C & M Borthwick Pty Ltd  
A.C.N. 159 583 561  
3 Jodie Court  
Diamond Creek VIC 3089

(b) Initial Member(s):-

BORTHWICK, Colin William  
3 Jodie Court  
Diamond Creek VIC 3089

BORTHWICK, Marliyn  
3 Jodie Court  
Diamond Creek VIC 3089

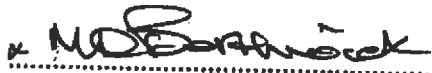
(c) Principal Employer (if any):-


Executed as a deed on the date appearing on page 1.

Executed for and on behalf of

C & M Borthwick Pty Ltd  
A.C.N. 159 583 561

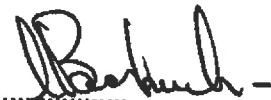
in their capacity as Trustee in the presence of:

  
.....  
Director *M Borthwick*

  
.....  
Secretary *Colin*

.....  
OR Sole Director and Secretary

Signed Sealed and Delivered by  
Borthwick, Colin William  
in their capacity as Initial Member  
in the presence of:

  
.....  
Borthwick, Colin William

  
.....  
Witness (Signature)

*OSCAR ALVARADO*  
.....  
Print Name of Witness

Signed Sealed and Delivered by  
Borthwick, Marliyn  
in their capacity as Initial Member  
in the presence of:

  
.....  
Borthwick, Marliyn

  
.....  
Witness (Signature)

*OSCAR ALVARADO*  
.....  
Print Name of Witness