

**Deed of Variation**

**- varying -**

**Tarca Family Superannuation Fund**

**Prepared for NTAA Corporate by  
Australian Business Structures  
Order: 720423**

5/09

## DEED OF VARIATION

THIS DEED OF VARIATION is made on the 25 day of March 2010.

**PARTY:** **Andrew Domenic Tarca** (Trustees)  
of 23 Barnett Avenue, ST Marys, SA 5042

**Angela Maria Tarca**  
of 23 Barnett Avenue, ST Marys, SA 5042

### RECITALS:

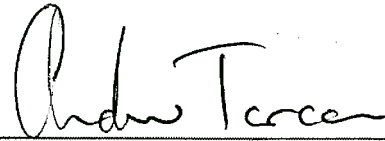
- A. By Declaration of Trust dated 20 August 2008 (**Trust Deed**), the Tarca Family Superannuation Fund (**Fund**) was established for the benefit of certain present and future persons as will become members of the Fund and their dependants.
- B. The Trustees have decided to vary the Trust Deed to ensure that it is consistent with the current self managed superannuation fund provisions of the Superannuation Industry (Supervision) Act 1993 and to update the Trust Deed with developments in the superannuation laws since the Fund was established.
- C. Clause 39 (**Amending Clause**) of the Trust Deed allows the Trust Deed to be amended, altered or modified from time to time by the Trustees by deed of variation (**Deed of Variation**) executed by the Trustees.
- D. Each Member has been provided with a copy of this Deed of Variation, and they consent to the variations effected by it.
- E. The variations effected by this Deed of Variation do not vary the main purpose of the Trust Deed, reduce any benefits accrued by members, or affect the basis for calculating the amount of retirement benefits of any member in a way that reduces the amount with respect to the period of membership before the commencement date of this Deed of Variation, and are permitted under the Amending Clause.

### IT IS DECLARED:

- 1. **Confirmation**  
The Trustees agree to maintain the Fund which was established by the Trust Deed on the date specified in Schedule A.
- 2. **Amendments**  
The operative provisions of the Trust Deed are amended by being deleted and replaced by clauses 1 to 53 and Schedules A, B and C attached as Annexure 'A' to this Deed of Variation.
- 3. **Pension Already in Payment**  
If a Pensioner is in receipt of a Pension from the Fund on the date set out at the beginning of this Deed of Variation (**Effective Date**), such Pension:
  - (a) must continue to be paid in accordance with the provisions of the Deed applicable to such Pension in effect immediately prior to the Effective Date, until such time as the Pensioner elects pursuant to clause 31.2 of the Trust Deed as amended to have the Pension paid in accordance with the conditions applying to a different type of pension; and
  - (b) may be commuted in accordance with the provisions of the Deed applicable to such Pension in effect immediately prior to the Effective Date, to the extent only that such conditions of commutation are at the time of commutation acceptable under the Relevant Law.
- 4. **Effective Date**  
This Deed of Variation takes effect on the Effective Date.

EXECUTED as a Deed.

SIGNED SEALED AND DELIVERED by the said )  
Andrew Domenic Tarca as Trustee in the presence of: )



Andrew Domenic Tarca

  
Witness

SIGNED SEALED AND DELIVERED by the said )  
Angela Maria Tarca as Trustee in the presence of: )



Angela Maria Tarca

  
Witness

**ANNEXURE A  
TABLE OF CONTENTS**

<b>1</b>	<b>DIVISIONS OF DEED</b>	<b>1</b>
<b>2</b>	<b>PURPOSE</b>	<b>1</b>
	2.1 Purpose of Fund	1
	2.2 Maintenance of the Fund as a Self Managed Superannuation Fund	1
	2.3 Ceasing to be a Self Managed Superannuation Fund	1
<b>3</b>	<b>COVENANTS</b>	<b>1</b>
	<b>DIVISION A MANAGEMENT AND ADMINISTRATION</b>	<b>2</b>
<b>4</b>	<b>INTERPRETATION - DEFINITIONS</b>	<b>2</b>
<b>5</b>	<b>INTERPRETATION - GENERAL</b>	<b>7</b>
	5.1 Plural and Gender of Words	7
	5.2 Including and Includes	7
	5.3 Headings to Clauses	7
	5.4 Defined Words	7
	5.5 Statutory Enactments	7
	5.6 Fund Subject to Relevant Law	7
	5.7 Superannuation Guarantee Legislation	7
<b>6</b>	<b>GENERAL PROVISIONS</b>	<b>8</b>
	6.1 Exercise of Trustee's Rights and Conduct of Proceedings	8
	6.2 Voting	9
	6.3 Rights of Members	9
	6.4 Inquiries, Complaints and Disputes	9
	6.5 Family Law	9
<b>7</b>	<b>PROPER LAW</b>	<b>9</b>
<b>8</b>	<b>MEMBERSHIP OF FUND</b>	<b>9</b>
	8.1 Members	9
	8.2 Admission to Membership	10
	8.3 Members and Beneficiaries to Provide Information	10
	8.4 Incorrect or Misleading Information	11
	8.5 Information about Employment Status	11
	8.6 Anticipated Change of Status	11
	8.7 Status as Self Managed Superannuation Fund	11
<b>9</b>	<b>MEMBERSHIP NOTIFICATION REQUIREMENTS</b>	<b>11</b>
	9.1 Notice to New Members	11
	9.2 Disclosure and Reporting Requirements	11
	9.3 Notice to Former Member	12
	9.4 Disclosure Limitation	12
	9.5 Inspection of Trust Deed and Other Documents	12
<b>10</b>	<b>CESSATION OF MEMBERSHIP</b>	<b>12</b>
	10.1 Cessation	12
	10.2 Anticipated Change of Status	12
<b>11</b>	<b>THE FUND</b>	<b>13</b>
	11.1 Fund Vested in Trustee	13
	11.2 Fund Assets	13
<b>12</b>	<b>FUND ACCOUNTS</b>	<b>13</b>
	12.1 Accumulation Accounts	13
	12.2 Credits to Accumulation Accounts	13
	12.3 Debits to Accumulation Accounts	14
	12.4 Income Account	15
	12.5 Reserve Account	16
	12.6 Adjustment of Accumulation Account or Pension Account	17
	12.7 Other Accounts	17
	12.8 Valuation of the Fund	17
<b>13</b>	<b>FUND RECORDS, DISCLOSURE AND INVESTIGATION</b>	<b>17</b>
	13.1 Receipt and Payment of Money	17
	13.2 Issue of Receipts	17
	13.3 Records and Accounts to be Kept	17
	13.4 Audit	18

	13.5	Disclosure and Reporting Requirements	18
14		<b>FUND TRUSTEE – APPOINTMENT AND REMOVAL</b>	<b>18</b>
	14.1	Nature of Trustee	18
	14.2	Eligibility for Appointment as Trustee	18
	14.3	Corporate Trustee	18
	14.4	Individual Trustees	19
	14.5	Later Trustees or Directors	19
	14.6	Ceasing to be Trustee	19
	14.7	Continuity of Office	19
	14.8	Other Persons as Trustees or Directors	19
	14.9	Appointment of Trustee	20
	14.10	Trustee Declarations	21
15		<b>TRUSTEE'S INVESTMENT POWERS</b>	<b>21</b>
	15.1	Authorised Investments	21
	15.2	Power to Sell and Vary Investments	22
	15.3	Interest of Trustee in Investment	22
	15.4	Provision of Investment Choice	22
16		<b>TRUSTEE'S POWERS OF MANAGEMENT</b>	<b>23</b>
	16.1	Additional Powers	23
	16.2	Exercise of Trustee Powers	25
	16.3	Trustee Discretion	25
	16.4	Trustee Delegation	25
	16.5	Trustee Direction	26
17		<b>LIMITATION OF LIABILITY</b>	<b>26</b>
	17.1	Liability of Trustees, Directors and Officers	26
	17.2	Loss, Default, Bona Fide Acts, Mistake	26
	17.3	Limitation of Exemption from Liability	26
18		<b>INDEMNITY OF TRUSTEE</b>	<b>26</b>
	18.1	Indemnity and Lien	26
	18.2	Payments in Good Faith	27
	18.3	Opinion or Advice	27
	18.4	Failure to Carry Out Agreement	27
	18.5	Agents and Servants of Trustee	27
	18.6	Limitation of Indemnity	27
19		<b>REMUNERATION AND REIMBURSEMENT</b>	<b>27</b>
	19.1	Remuneration	27
	19.2	Reimbursement	27
20		<b>APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS</b>	<b>28</b>
	20.1	Actuary and Auditor	28
	20.2	Administration Manager	28
	20.3	Investment Manager	28
	20.4	Custodian	29
	20.5	Consultants and Officers	29
	20.6	Removal	29
21		<b>ACTUARIAL INVESTIGATIONS</b>	<b>29</b>
22		<b>CONTRIBUTIONS TO FUND</b>	<b>29</b>
	22.1	Member and Employer Contributions	29
	22.2	Designation of Class Entitlements	29
	22.3	Contributions in Cash or Assets	30
	22.4	No Obligation to Contribute	30
	22.5	Acceptance of Contributions	30
	22.6	Ineligible Contributions	30
	22.7	Spouse and Other Contributions	30
	22.8	Must Allocate Contributions	31
23		<b>TRANSFERS AND ROLL-OVERS TO APPROVED BENEFIT ARRANGEMENTS</b>	<b>31</b>
	23.1	Request for Transfer or Roll-Over to Approved Benefit Arrangement	31
	23.2	Amount of Transfer	31
	23.3	Effect, Method and Timing of Transfer or Roll-Over	31

	23.4	Contribution Split	32
24		<b>TRANSFERS AND ROLL-OVERS WITHOUT CONSENT</b>	<b>32</b>
	24.1	Successor Fund Transfers	32
	24.2	Eligible Roll-Over Funds	32
25		<b>TRANSFERS AND ROLL-OVERS FROM APPROVED BENEFIT ARRANGEMENTS</b>	<b>32</b>
	25.1	Transfer or Roll-Over of Benefit Entitlements or Benefits	32
	25.2	Rights and Entitlements in Transferred Benefit Entitlements or Benefits	32
26		<b>FORFEITURE OF BENEFIT ENTITLEMENTS</b>	<b>33</b>
	26.1	Conditions of Forfeiture	33
	26.2	Accumulation Account Residue	33
	26.3	Forfeiture Account	33
	26.4	Application of Forfeited Benefit Entitlements	33
	26.5	Readjustment of Member Interest	34
	26.6	Severability	34
27		<b>INCOME STREAMS - PENSIONS AND ANNUITIES</b>	<b>34</b>
	27.1	Determination to Pay Pension or Annuity	34
	27.2	Choice of Pension	35
	27.3	Establishment of Pension Account	35
	27.4	Operation of Pension Account	36
	27.5	Segregation of Pension Assets	37
	27.6	Actuarial Certification	37
28		<b>ACCOUNT-BASED PENSION PAYMENT CONDITIONS</b>	<b>37</b>
	28.1	Method of Payment and Security of Account-Based Pension	37
	28.2	Death of a Pensioner	38
	28.3	Commutation of Account-Based Pension	38
29		<b>NON-COMMUTABLE ACCOUNT-BASED PENSIONS (TRANSITION TO RETIREMENT)</b>	<b>39</b>
	29.1	Request to pay Non-Commutable Account-Based Pension	39
	29.2	Compliance with Relevant Law	39
	29.3	Method of Payment and Security of Non-Commutable Account-Based Pension	39
30		<b>MARKET LINKED PENSION PAYMENT CONDITIONS</b>	<b>39</b>
	30.1	Method of Payment and Security of Market Linked Pension	39
	30.2	Death of a Pensioner	40
	30.3	Commutation of Market Linked Pension	40
	30.4	Non-Commutable Market Linked Pension (Transition to Retirement)	41
31		<b>OTHER PENSION PAYMENT CONDITIONS</b>	<b>41</b>
	31.1	Other Pension Types	41
	31.2	Conversion of Pensions	41
32		<b>TRANSFER IN SPECIE</b>	<b>41</b>
	32.1	Transfer of Policy	41
	32.2	Transfer of Investments	42
	32.3	No Beneficial Interest	42
33		<b>PAYMENT OF BENEFITS ON DEATH</b>	<b>42</b>
	33.1	Binding Death Benefit Notices	42
	33.2	Non-Binding Death Benefit Notices	42
	33.3	Revocation or Amendment of Binding and Non-Binding Death Benefit Notices	42
	33.4	Payments to Dependants, Legal Personal Representatives or Other Persons	43
	33.5	Discharge of Trustee	43
34		<b>PAYMENT OF BENEFITS</b>	<b>43</b>
	34.1	Address for Benefits	43
	34.2	Notification of Address	43

	34.3	Receipt for Benefits	44
	34.4	Notification of Claims and Proofs	44
	34.5	Notification Outside Time Limit	44
	34.6	No Personal Claim	44
	34.7	Payment to Others on Behalf of Beneficiaries	44
	34.8	Unclaimed Benefits	45
	34.9	Death of Member Prior to Benefit Payment	45
	34.10	Limitation on Benefit Payments	45
<b>35</b>		<b>PAYMENT OF TAXATION AND LEVIES</b>	<b>45</b>
	35.1	Tax on Contributions and Shortfall Components	45
	35.2	Surcharge	45
	35.3	Tax on Income	45
	35.4	Tax on Benefits	45
	35.5	Payment to Relevant Authority	46
<b>36</b>		<b>POLICIES OF ASSURANCE</b>	<b>46</b>
	36.1	Trustee to Effect Policy	46
	36.2	Trustee Required to Effect Policy	46
	36.3	Premiums for Policy	46
	36.4	Limitations on Policy	46
	36.5	Endowment or Whole of Life Policy	46
<b>37</b>		<b>VARIATION OF TRUST DEED</b>	<b>47</b>
	37.1	Resolution or Deed	47
	37.2	Notice	47
	37.3	Limitation on Variation	47
	37.4	Further limitation on Variation	47
<b>38</b>		<b>WINDING UP OF FUND</b>	<b>47</b>
	38.1	Election to Terminate	47
	38.2	Procedure on Winding Up	48
	38.3	Exhaustion of Fund	48
<b>39</b>		<b>MEMBERSHIP CLASSIFICATION</b>	<b>48</b>
	39.1	Classes of Membership	48
	39.2	Reclassification	48
	39.3	Transfer of Accumulation Account	48
<b>40</b>		<b>GUARDIAN</b>	<b>49</b>
	40.1	Appointment of Guardian	49
	40.2	Consent of Guardian	49
		<b>DIVISION B - DETERMINATION AND PAYMENT OF BENEFITS</b>	<b>49</b>
<b>41</b>		<b>TREATMENT OF PRESERVED BENEFITS</b>	<b>49</b>
<b>42</b>		<b>PAYMENT OF PRESERVED AMOUNTS</b>	<b>49</b>
<b>43</b>		<b>PAYMENT OF NON-PRESERVED AMOUNTS</b>	<b>49</b>
<b>44</b>		<b>COMPULSORY PAYMENT OF BENEFITS</b>	<b>49</b>
<b>45</b>		<b>BENEFIT AUGMENTATION</b>	<b>50</b>
<b>46</b>		<b>DEALING WITH BENEFITS</b>	<b>50</b>
	46.1	Payment of Benefits	50
	46.2	Retention of Benefits	50
<b>47</b>		<b>RETIREMENT</b>	<b>50</b>
<b>48</b>		<b>INCAPACITY</b>	<b>51</b>
	48.1	Permanent Incapacity	51
	48.2	Temporary Incapacity	51
<b>49</b>		<b>EARLY RETIREMENT FROM EMPLOYMENT</b>	<b>51</b>
<b>50</b>		<b>OTHER TERMINATION OF EMPLOYMENT</b>	<b>52</b>
<b>51</b>		<b>PAYMENT ON DEATH</b>	<b>52</b>
	51.1	Benefits	52
	51.2	Interim Benefit Payment	52
<b>52</b>		<b>PAYMENT ON TERMINAL MEDICAL CONDITION</b>	<b>52</b>
<b>53</b>		<b>OTHER BENEFIT PAYMENT EVENTS</b>	<b>52</b>
		<b>SCHEDULE A</b>	<b>53</b>
		<b>SCHEDULE B</b>	<b>54</b>
		<b>SCHEDULE C</b>	<b>55</b>

## **1 DIVISIONS OF DEED**

This Deed is divided into two divisions. Division A governs the management and administration of the Fund and Division B governs the determination and payment of Benefits.

## **2 PURPOSE**

### **2.1 Purpose of Fund**

The Trustee must maintain the Fund solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment, for the Dependants of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law, provided that while the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund will be the provision of old-age pensions within the meaning of the Relevant Law.

### **2.2 Maintenance of the Fund as a Self Managed Superannuation Fund**

The Trustee must manage the Fund and must exercise its powers and discretions so as to ensure that at all times, subject to clause 2.3, the Fund is a Self Managed Superannuation Fund.

### **2.3 Ceasing to be a Self Managed Superannuation Fund**

If:

- (a) the Trustee considers that it is not possible or not reasonably practicable for the Fund to continue to be a Self Managed Superannuation Fund; or
- (b) all of the Members so request in writing, the Trustee and the Members must do all such things as are required for the Fund to commence to meet the requirements under the Relevant Law to be another type of regulated superannuation fund, including amending this Deed, notifying the Regulator and applying for such approvals as are required in the circumstances under the Relevant Law, and appointing a replacement trustee which meets the requirements under the Relevant Law applicable to the trustee of the relevant type of regulated superannuation fund.

## **3 COVENANTS**

The Trustee for itself, its successors and assigns covenants with the Members to perform and observe the covenants, trusts and conditions of this Deed and the covenants and obligations imposed by the Relevant Law so far as they are or ought to be observed by the Trustee, including the following covenants:

- (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 Members and 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 an Employer, or an associate of an Employer;
- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (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 - 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 Member or Beneficiary access to any prescribed information or any prescribed documents.

#### **DIVISION A MANAGEMENT AND ADMINISTRATION**

##### **4 INTERPRETATION - DEFINITIONS**

In this Deed, unless the context otherwise requires:

**Account** means an account established under this Deed;

**Account-Based Pension** means a Pension which complies with clause 28;

**Accumulation Account** means an account established in respect of a Member or Beneficiary under clause 12.1;

**Actuary** means a person so appointed (if any) under clause 20.1;

**Administration Manager** means a person so appointed (if any) under clause 20.2;

**Annuity** has the meaning given to it in the Relevant Law;

**Anti-Detriment Payment** means an amount paid by the Trustee on the death of a Member by way of an increase to the lump sum Benefit so that the amount of the lump sum Benefit is the amount that the Fund could have paid on the death of the Member if no tax had been payable on amounts included in Contributions to the Fund in respect of the Member that were assessable income of the Fund;

**Approved Benefit Arrangement** means a fund, account or benefit arrangement to or from which a Benefit or a Benefit Entitlement may be rolled-over or transferred without causing the Fund to be in breach of or to fail to comply with the Relevant Law, including without limitation:

- (a) the Fund;

- (b) another Complying Superannuation Fund;
- (c) a fund which is an approved deposit fund for the purposes of the Relevant Law;
- (d) an account which is a retirement savings account for the purposes of the Retirement Savings Account Act 1997;
- (e) an Annuity arrangement; and
- (f) an Eligible Roll-Over Fund;

**Auditor** means a person so appointed (if any) under clause 20.1;

**Beneficiary** means a person presently and absolutely entitled to receive a Benefit at the relevant time including a Pensioner but not including a person who is a Member at that time unless the Benefit to which the Member is entitled has arisen in relation to another Member;

**Benefit** means an amount payable by the Trustee out of the Fund under this Deed to or in respect of a Member or Beneficiary;

**Benefit Entitlement** means an amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled including a contingent right to payment of the amount;

**Binding Death Benefit Notice** means a notice given by a Member or Beneficiary to the Trustee as provided in clause 33.1;

**Child** has the meaning given to it in SIS;

**Co-Contribution** means a payment made to the Fund by the Commonwealth Government pursuant to any arrangement under which the Commonwealth Government makes a superannuation contribution for or in respect of a Member;

**Commissioner** means the Commissioner of Taxation or any duly appointed delegate;

**Complying Superannuation Fund** has the meaning given to it in the Relevant Law;

**Constitutional Corporation** has the meaning given to it in the Relevant Law;

**Contribution Split** means the splitting of Contributions by a person in whole or in part in favour of the person's Spouse as permitted under the Relevant Law;

**Contribution Splitting Application** means an application lodged by a Member with the Trustee requesting the Trustee to give effect to a Contribution Split;

**Contributions** means gross payments to the Fund by Members, Spouses of Members, Employers, and other persons in respect of Members in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those contributions and includes a Co-Contribution and a payment made to the Fund in consequence of a Contribution Split by the Spouse of a Member in favour of the Member;

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

**Dependant** in relation to a Member, Beneficiary or former Member (in this definition referred to as the **primary person**) means:

- (a) the Spouse of the primary person;
- (b) a Child of the primary person;
- (c) any person with whom the primary person has or had an interdependency relationship within the meaning given to it in the Relevant Law at the relevant time;
- (d) any other person who, in the opinion of the Trustee, was substantially dependent

- on the primary person at the relevant time; and
- (e) any other person who qualifies as a dependant of the primary person for the purposes of the Relevant Law;

**Directors** means the directors or board of management for the time being of the Trustee and Director has a corresponding meaning;

**Disqualified** means, in relation to a person or an entity, disqualified for the purposes of SIS;

**Eligible Roll-Over Fund** has the meaning given to it in SIS;

**Employee** means an employee for the purposes of such provisions of the Relevant Law as apply in the circumstances;

**Employer** has the meaning given to it in the Relevant Law;

**Employment Termination Payment** has the meaning given to it in the Tax Act;

**Financial Assistance** means financial assistance granted to the Fund under any arrangement administered by a Regulator;

**Forfeiture Account** means an account established under clause 26.3;

**Full-Time Gainful Employment** in relation to a Member means full-time Gainful Employment as defined in the Relevant Law;

**Fund** means the fund established by this Deed, the name of which is specified in Schedule A;

**Fund Earning Rate** means the earning rate for the Fund (which may be negative) determined under clause 12.4(c) and, where the context requires, includes an interim Fund Earning Rate determined under clause 12.4(f);

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

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

**Guarantee Act** means the Superannuation Guarantee (Administration) Act 1992 and any regulations made under that Act;

**Income Stream** means a Pension or an Annuity within the meaning of clause 27.1;

**Individual Trustee** means an individual who is appointed to be a Trustee;

**Insurer** means an insurer (if any) with whom the Trustee effects a Policy or Policies;

**Investment Manager** means a person so appointed (if any) under clause 20.3;

**Legal Personal Representative** means a person who is a legal personal representative for the purposes of the Relevant Law;

**Levy** includes a levy payable by the Fund to the Regulator in accordance with the Relevant Law or any other legislation or regulations which impose a levy or levies on the Fund;

**Market Linked Pension** means a Pension that complies with clause 30;

**Member** means a person who has been accepted as a member of the Fund under clause 8 and who has not ceased to be a member of the Fund under clause 10, and Membership means membership of the Fund;

**Non-Binding Death Benefit Notice** means a notice given by a Member or Beneficiary to the Trustee as provided in clause 33.2;

**Non-Commutable Account-Based Pension** means a pension payable under clause 29 to a Member who has attained their Preservation Age;

**Non-Commutable Market Linked Pension** means a pension payable under clause 30.4;

**Non-Preserved Amount** means an amount including a Roll-Over Superannuation Benefit payable to or in respect of a Member or Beneficiary which is not subject to any cashing restrictions at the time of payment in accordance with the Relevant Law;

**Normal Retirement Age** means the age of 65 years or such other age being not less than 55 years as is acceptable under or required by the Relevant Law and as the Trustee may determine;

**Part-Time Gainful Employment** in relation to a Member means Gainful Employment during a financial year:

- (a) in respect of Contributions, for such number of hours or on such basis as is prescribed under the Relevant Law;
- (b) in respect of Benefits, for such number of hours or on such basis as is prescribed under the Relevant Law;

**Payment Split** means an allocation of a superannuation interest to a current or former spouse, (whether or not they are a Member), made as a result of:

- (a) a court order altering the property interests of the parties to a marriage under Relevant Family Law; or
- (b) a superannuation agreement under Relevant Family Law;

**Pension** means a pension of one of the types specified in clause 27.2;

**Pensioner** means a Member or a Reversionary Beneficiary in receipt of a Pension from the Fund;

**Pension Account** means an account established in respect of a Pensioner under clause 27.3;

**Permanent Incapacity:**

- (a) has the meaning given to it or to a corresponding term in any Policy effected by the Trustee with an Insurer in respect of a Member and in force at the time of the incapacity of the Member; or
- (b) has the meaning given to it in SIS;

**Policy** means a policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy, a policy covering any two or more of the foregoing risks and a policy which provides that Benefits are payable to the Trustee on the death or disablement of a Member;

**Preservation Age** in relation to a Member has the meaning given to it in the Relevant Law;

**Preserved Payment** means a payment made to the Fund by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be preserved as provided for in this Deed in order for the Fund to be a Complying Superannuation Fund and Preserved Payment Benefit means a Benefit arising from a Preserved Payment;

**Regulator** means, as the case requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or

such other regulatory body with responsibility for administration of superannuation and the Fund;

**Relative** in relation to a person has the meaning given to it in the relevant context by SIS;

**Release Authority** means a release authority given to the Trustee under the Tax Act;

**Relevant Family Law** means the Family Law Act 1975, regulations made under that Act and any other provisions of the Relevant Law which govern superannuation and family law;

**Relevant Law** means:

- (a) SIS, Corporations Act 2001, Corporations Regulations 2001, Relevant Family Law, Financial Sector (Collection of Data) Act 2001, Superannuation (Resolution of Complaints) Act 1993, Bankruptcy Act 1966, Social Security Act 1991, Veterans' Entitlements Act 1986, Tax Act and any other present or future legislation which the Trustee must comply with in order for the Fund to:
- (i) qualify for concessional Taxation treatment as a Complying Superannuation Fund;
  - (ii) avoid any penalty, detriment or disadvantage which is or may become payable or imposed in connection with the Fund or anything done or to be done under this Deed; or
  - (iii) meet any other requirements of the Regulator; and
- (b) in relation to the collection, holding, use and disclosure of personal information as defined in the Privacy Act 1988, the National Privacy Principles and any other provisions of that Act,

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

**Reserve Account** means an account established under clause 12.5;

**Retires from Employment** in relation to the payment of Benefits on the retirement of a Member has the meaning given to in the Relevant Law;

**Reversionary Beneficiary** means a Dependant nominated by a Pensioner or determined by the Trustee as the person who is to receive the Pension upon the death of the Pensioner;

**Roll-Over Superannuation Benefit** has the meaning given to it in the Tax Act;

**Self Managed Superannuation Fund** has the meaning given to it in SIS;

**Shortfall Component** has the meaning given to it in the Guarantee Act;

**SIS** means the Superannuation Industry (Supervision) Act 1993 and the Superannuation Industry (Supervision) Regulations 1994 and any other regulations or statutory instruments made under the Superannuation Industry (Supervision) Act 1993;

**Spouse** has the meaning given to it in SIS;

**Superannuation Income Stream Benefit** has the meaning given to it in the Tax Act;

**Superannuation Lump Sum** has the meaning given to it in the Tax Act;

**Tax Act** means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997, as appropriate, and any regulations issued under those Acts;

**Tax File Number** has the meaning given to it in SIS;

**Taxation** includes income tax, any surcharge, any excess contributions tax or other amount of whatever description levied on the Fund, the Trustee, any Member, former Member or

Beneficiary under the Tax Act, the Superannuation Contributions Tax Imposition Act 1997, the Superannuation Contributions Tax (Assessment and Collection) Act 1997 and related legislation (including provisional or advance payments required under that legislation), capital gains tax, tax on Eligible Termination Payments, tax on Employment Termination Payments, payroll tax, land tax, stamp duty, goods and services tax and any other taxes or duties of whatever description paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member or Beneficiary;

**Terminal Medical Condition** has the meaning given to it in SIS;

**Temporary Incapacity:**

- (a) has the meaning given to it or to a corresponding term in any Policy effected by the Trustee with an Insurer in respect of a Member and in force at the time of the incapacity of the Member; or
- (b) has the meaning given to it in SIS;

**Trustee** means the trustee or trustees for the time being of the Fund whether original, additional or substituted;

**Unclaimed Benefits** means Benefits described as unclaimed money in the Relevant Law;

## 5 INTERPRETATION - GENERAL

### 5.1 Plural and Gender of Words

In this Deed, unless inconsistent with the subject matter or context, words importing one gender include the other gender and words importing the singular number include the plural number and vice versa.

### 5.2 Including and Includes

In this Deed, the words "including" and "includes" are not words of limitation.

### 5.3 Headings to Clauses

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

### 5.4 Defined Words

For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter does not alone imply that the word or phrase is used with a meaning different from that given by its definition.

### 5.5 Statutory Enactments

References to any statutory enactment must be construed as references to that enactment as amended, modified or re-enacted from time to time and include any enactment in substitution or replacement for such statutory enactment. Any reference in this Deed to a provision of an enactment includes the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

### 5.6 Fund Subject to Relevant Law

- (a) The provisions in this Deed are to be read subject to the Relevant Law.
- (b) This Deed must be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Deed to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to operate as a Self Managed Superannuation Fund (unless the Trustee and the Members have determined that

the Fund should cease to be a Self Managed Superannuation Fund and to commence to be another type of regulated superannuation fund as contemplated by clause 2.3), to qualify for concessional Taxation treatment and to satisfy any other requirements of the Regulator and this Deed must be further read and construed on the basis that:

- (i) where there is any inconsistency between a provision in this Deed and the Relevant Law, the latter prevails to the extent of the inconsistency; and
  - (ii) in the event of any doubt arising as to the effect of the Relevant Law or if there is an inconsistency between the Relevant Law and a provision of this Deed, the decision of the Trustee is final.
- (c) This Deed must not be read or construed and no such provision of the Relevant Law may be so incorporated if to do so would constitute a breach of the power granted by clause 37 to add to, amend, alter, modify, rescind or vary the provisions of this Deed.

#### **5.7 Superannuation Guarantee Legislation**

The Trustee must administer the Fund in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and must provide all certificates, reports and other information required under the Guarantee Act.

### **6 GENERAL PROVISIONS**

#### **6.1 Exercise of Trustee's Rights and Conduct of Proceedings**

Subject to the Relevant Law, all powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this Deed may be fully and effectively exercised, made, done or performed by or on behalf of the Trustee:

- (a) where the Trustee is a company, then by the Directors acting in accordance with its constitution or by any person or persons having the authorisation of such Directors to so act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, then:
  - (i) at a meeting of such persons where decisions are to be made as provided in clause 6.2 or as otherwise required by the Relevant Law;
  - (ii) the quorum for a meeting of the Individual Trustees shall be at least 75% of the Individual Trustees then holding office;
  - (iii) the Individual Trustees may meet in person or by using any technology that gives each Individual Trustee a reasonable opportunity to participate in the meeting;
  - (iv) if all of the Individual Trustees have signed a written resolution, such resolution shall be taken to have been passed upon being signed by the last of the Individual Trustees to sign. Such written resolution may take the form of a single document or a number of documents in substantially similar form.

**6.2 Voting**

Where the Trustee consists of Individual Trustees, then each Individual Trustee shall have such number of votes as is equal to the value in dollars of the total balances of each of the Accounts maintained in respect of the Individual Trustee (rounded up to the nearest dollar) at the time at which the vote is taken, but if there is a dispute between the Individual Trustees as to the value of such balances, then the value shall be the value on the date as at which the balances of Member Accounts were last determined by the Trustee and notified to Members.

**6.3 Rights of Members**

The provisions of this Deed do not in any way affect the right of a Member or any person on behalf of a Member or any other person to claim compensation or damages under any Act of Parliament or at common law or in circumstances where the Member is injured or dies as a result of an event arising out of or in the course of the employment of the Member.

**6.4 Inquiries, Complaints and Disputes**

- (a) If required by the Relevant Law, the Trustee must ensure that there are in force arrangements to deal with inquiries or complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Relevant Law.
- (b) Subject to the Trustee's right to determine in its discretion to appeal against any decision of a court, the Trustee must ensure that it implements any decision of a court as required by that court.

**6.5 Family Law**

- (a) Subject to the following provisions of this clause 6.5, despite any other provisions of this Deed, the Trustee is empowered to undertake and complete any actions in relation to the Fund or the Benefits or Benefit Entitlement of any Member or Beneficiary required in accordance with the Relevant Family Law.
- (b) The Trustee may at any time and from time to time elect under this clause 6.5(b) for the purposes of the Relevant Family Law that this Deed will not have operation to permit the Trustee to establish a new interest in the Fund from the interest of a Member or Beneficiary on the request by the Spouse of the Member or Beneficiary under the Relevant Family Law.
- (c) The Trustee may at any time and from time to time determine to revoke an election made under clause 6.5(b).

**7 PROPER LAW**

This Deed is governed, must be construed and takes effect in accordance with the laws of the State or Territory of the Commonwealth of Australia specified in Schedule A. The Trustee, Members and Beneficiaries must accept the jurisdiction of the courts of that State or Territory. The provisions of section 35B of the Trustee Act of South Australia 1936 do not apply to this Deed.

**8 MEMBERSHIP OF FUND****8.1 Members**

Subject to the following provisions of this clause 8, the Trustee may invite such persons to



become Members as the Trustee in its absolute discretion determines. Such persons may include persons who are under a legal disability, whether by reason of age or for some other reason. The Trustee may only accept a person as a Member where:

- (a) on acceptance, the total number of Members will not exceed 4 persons;
- (b) the person is not Disqualified from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee;
- (c) if the person is an Employee of any other person who is a Member, the person and the other person are Relatives; and
- (d) the Trustee is satisfied that the person will, at the time of being accepted as a Member, also become an Individual Trustee or a Director of the Trustee under clause 14 or will satisfy the conditions of clause 14.8.

The Trustee must require such persons to complete an application for Membership in the form of Schedule B or in such other form as the Trustee determines from time to time.

## **8.2 Admission to Membership**

- (a) On receipt of an application for Membership under clause 8.1, the Trustee may determine to admit the applicant to Membership of the Fund.
- (b) The Member will be deemed to have joined the Fund on a date determined by the Trustee or, where the Trustee makes no such determination, on the date the completed application for Membership is received.
- (c) Subject to any other conditions which may be applied under this Deed, the Trustee may:
  - (i) impose such conditions on an applicant's admission and the rights and duties of the applicant as a Member as it determines;
  - (ii) limit and impose such conditions on Benefits as it determines; and
  - (iii) remove or vary all or any such conditions at any time.
- (d) On admission to Membership, a Member is bound by this Deed in all respects as if the Member were an original party to the Deed.

## **8.3 Members and Beneficiaries to Provide Information**

- (a) Each applicant for Membership and any Beneficiary must, if requested by the Trustee:
  - (i) furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund; and
  - (ii) submit to any medical examinations by a registered medical practitioner acceptable to the Trustee which are required by the Trustee.
- (b) Where a Member or Beneficiary fails to comply with the provisions of this clause 8.3, or fails to provide the Trustee with the Member's or Beneficiary's Tax File Number, the Trustee may:
  - (i) suspend the collection of any Contributions in respect of that Member;
  - (ii) withhold any Benefits in respect of that Member or Beneficiary; and
  - (iii) impose such other conditions on the continued Membership of that Member or on the Beneficiary,

as the Trustee deems appropriate.

#### **8.4 Incorrect or Misleading Information**

Where a Member or Beneficiary furnishes information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of the Member or Beneficiary; and

- (a) the information supplied is incorrect or misleading; or
- (b) any relevant information is deliberately withheld,

the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.

#### **8.5 Information about Employment Status**

A Member must inform the Trustee as soon as practicable after the Member ceases Part-Time Gainful Employment or Full-Time Gainful Employment after age 65 years.

#### **8.6 Anticipated Change of Status**

A Member must inform the Trustee as soon as practicable of any event which has or may have effect that:

- (a) the Member becomes an employee of any other Member where the Member is not a Relative of the other Member; or
- (b) the Member becomes Disqualified from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee.

#### **8.7 Status as Self Managed Superannuation Fund**

(a) If at any time, a Member ceases to satisfy clauses 8.1(b) or 8.1(c) the Trustee and the Members must complete such arrangements as are necessary to ensure that the Membership of the Fund as a whole satisfies those requirements by no later than 6 months after the Member ceased to satisfy those requirements or by such other time as is prescribed under the Relevant Law as the time by which the trusteeship of the Fund must meet the trusteeship requirements for Self Managed Superannuation Funds under the Relevant Law.

- (b) For the purposes of clause 8.7(a):
- (i) a Member may request that all the Member's Benefits or Benefit Entitlement be paid in accordance with Division B of this Deed or be transferred or rolled-over to an Approved Benefit Arrangement under clause 23; or
  - (ii) the Trustee may transfer a Member's Benefit Entitlement or roll-over a Member's Benefit to an Eligible Roll-Over Fund under clause 24.2.

### **9 MEMBERSHIP NOTIFICATION REQUIREMENTS**

#### **9.1 Notice to New Members**

Before or, where the Relevant Law permits, as soon as practicable after the admission of a person as a Member, the Trustee must arrange for the person to be given a written statement containing information and details relating to the Fund as required by the Relevant Law.

#### **9.2 Disclosure and Reporting Requirements**

The Trustee must arrange for Members, former Members and Beneficiaries to be provided with information in writing or copies of accounts, records or documents of the Fund as

required by the Relevant Law on an annual basis and on other occasions and in such manner required by the Relevant Law.

### **9.3 Notice to Former Member**

As soon as practicable after a person ceases to be a Member, the Trustee must arrange for the former Member or the Legal Personal Representative of the former Member to be given a written statement containing such information and details relating to the Benefits of the former Member required by the Relevant Law.

### **9.4 Disclosure Limitation**

No Dependant of a Member is entitled to obtain information in respect of any details of the operation of the Fund or any matter which may relate to the conduct of the Fund which in the opinion of the Trustee it would be inappropriate to disclose other than as is provided for by this clause 9.

### **9.5 Inspection of Trust Deed and Other Documents**

A copy of this Deed, any other documents as required by the Relevant Law and any trust documents must be made available for inspection by any Member. A copy of this Deed and any other documents required by the Relevant Law must be made available for inspection by a Beneficiary on the request of the Beneficiary and unless otherwise required by the Relevant Law, it is sufficient for the purposes of this clause 9.5 to make a copy of this Deed or such documents available to the Member or Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when that office or business is open.

## **10 CESSATION OF MEMBERSHIP**

### **10.1 Cessation**

A person ceases to be a Member on the earliest to occur of the following:

- (a) on the person ceasing to be an Individual Trustee or a Director of a Constitutional Corporation which is the Trustee, unless the conditions of clause 14.8 are satisfied;
- (b) unless the Trustee otherwise determines, the date on which payment of all the Member's Benefit is made to the Member or to an Approved Benefit Arrangement on behalf of the Member;
- (c) the death of the Member; and
- (d) unless the Trustee otherwise determines, the date when Benefits payable to or on behalf of a Member cease to be payable.

### **10.2 Anticipated Change of Status**

A Member must, in conjunction with the Trustee, ensure that the Member ceases to be a Member prior to, or as soon as practicable after the occurrence of any event which would have the effect that:

- (a) the Member becomes an employee of any other Member where the Member is not a Relative of the other Member; or
- (b) the Member becomes Disqualified from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee.

**11 THE FUND****11.1 Fund Vested in Trustee**

The Fund is vested in and must be managed by the Trustee on the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

**11.2 Fund Assets**

The gross assets of the Fund consist of all the cash, investments and other property held by or on account of the Trustee on the trusts of this Deed and include:

- (a) the amount, if any, standing or transferred to the credit of the Fund at or after the date on which this Deed comes into effect;
- (b) such Contributions as the Members make to the Fund at any time;
- (c) such Contributions as an Employer makes to the Fund at any time in respect of a Member;
- (d) such Co-Contributions as are made to the Fund at any time;
- (e) such Contributions resulting from a Contribution Split by a Spouse of a Member in favour of the Member as are received by the Fund at any time from another Complying Superannuation Fund;
- (f) interest, dividends and distributions of income arising from any investment and the accumulation of that income;
- (g) profits and other benefits arising from any investment and the accumulation of those profits;
- (h) the proceeds (including bonuses) of any Policy held by the Fund;
- (i) money, investments and other property transferred to the Fund as a Roll-Over Superannuation Benefit or otherwise;
- (j) any Shortfall Components received by the Fund;
- (k) any Financial Assistance received by the Fund; and
- (l) any other Contributions or amounts permitted under this Deed and the Relevant Law.

**12 FUND ACCOUNTS****12.1 Accumulation Accounts**

The Trustee must establish an Accumulation Account for each applicable membership class in respect of each Member, including such sub-accounts as the Trustee considers necessary or desirable for the administration of the Fund.

**12.2 Credits to Accumulation Accounts**

The following amounts will be credited to the appropriate Accumulation Account:

- (a) any amount paid into the Fund in respect of a Member as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to credit;
- (b) any Contributions made by a Member;
- (c) any Contributions made in respect of a Member by an Employer;
- (d) any Co-Contribution received in respect of a Member;
- (e) such Contributions resulting from a Contribution Split by a Spouse of a Member in favour of the Member as are received by the Fund at any time from another Complying Superannuation Fund;

- (f) the proceeds of any Policy or Annuity effected by the Trustee in respect of a Member or Beneficiary and paid to the Trustee which the Trustee considers it appropriate to credit;
- (g) such positive earnings as are determined by the Trustee in accordance with clauses 12.4, 12.6 and 15.4(e);
- (h) any forfeited amounts allocated to but not paid directly to the Member or Beneficiary under clause 26.4;
- (i) any amounts transferred from the Pension Account of a Beneficiary;
- (j) any Shortfall Component paid in respect of the Member;
- (k) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (l) any other Contributions made in respect of the Member and permitted under this Deed and the Relevant Law;
- (m) such part of the proceeds from the commutation of a Pension as the Trustee has determined to transfer to the Accumulation Account under clause 28.3(b)(ii) or such other applicable clause;
- (n) any amounts transferred from a Reserve Account; and
- (o) such other amounts as the Trustee may from time to time determine.

### **12.3 Debits to Accumulation Accounts**

The following amounts will be debited to the appropriate Accumulation Account:

- (a) any amount paid out of the Fund in respect of a Member or Beneficiary as a transfer or Roll-Over Superannuation Benefit which the Trustee considers it appropriate to debit;
- (b) any Benefit payments made to or in respect of a Member or Beneficiary, other than payments from a Pension Account;
- (c) the costs of any Policy or Annuity effected by the Trustee in respect of the relevant Member or Beneficiary, subject to clause 12.4(b)(iv);
- (d) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Roll-Over Superannuation Benefit as the Trustee may determine;
- (e) such of the costs, charges and expenses incurred under clause 19 or an appropriate portion thereof as the Trustee may determine;
- (f) the amount of any lien exercised under clause 18 or an appropriate portion thereof as the Trustee may determine;
- (g) any amount forfeited under clauses 26.1, 26.2 or 33.4(c)(ii);
- (h) such negative earnings as may be determined by the Trustee in accordance with clauses 12.4, 12.6 or 15.4(e);
- (i) any amount paid in respect of the Trustee indemnity under clause 18 or an appropriate portion thereof as the Trustee may determine;
- (j) any amount transferred to the Pension Account of a Beneficiary;
- (k) the amount of any Levy determined by the Trustee to be appropriate to debit;

- (l) the amount of any Taxation attributable to the Member or Beneficiary;
- (m) the amount of any Contributions which are the subject of a Contribution Splitting Application from a Member and which are paid by the Trustee to another Complying Superannuation Fund or to the account of the Member's Spouse within the Fund in accordance with such application;
- (n) such amount as is referred to in a Release Authority given by a Member or Beneficiary to the Trustee, and which is paid by the Trustee to the Member or Beneficiary or to the Commissioner in accordance with such Release Authority; and
- (o) such other amounts as the Trustee may determine from time to time.

#### **12.4 Income Account**

- (a) The Trustee must establish an Income Account for the Fund to which the following, subject to clause 15.4(e), will be credited:
  - (i) all income and profits of the Fund each Fund Year;
  - (ii) any credits arising out of adjustments under clause 12.6;
  - (iii) any amount transferred from a Reserve Account under clause 12.5;
  - (iv) the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to any other Account; and
  - (v) any Financial Assistance received by the Fund and not credited to any other Account,

and profits of the Fund include any surplus arising from a valuation undertaken at any time during the year in accordance with clause 12.8.
- (b) The Income Account will, subject to clause 15.4(e), be debited with the following:
  - (i) any loss sustained on the disposal of any investments of the Fund;
  - (ii) any costs or charges incurred under clause 19.2 which are not debited to any other Account;
  - (iii) any debits arising out of adjustments under clause 12.6;
  - (iv) the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to any other Account;
  - (v) any deficiency arising from a valuation undertaken under clause 12.8;
  - (vi) any amount payable or which may become payable by way of Taxation in respect of Contributions, Shortfall Components and income and profits of the Fund which are not debited to any other Account as the Trustee determines to be equitable;
  - (vii) any amount of Levy payable by the Fund and not debited to any other Account; and
  - (viii) any income transferred from the Income Account to a Reserve Account.
- (c) Following the debiting of the Income Account under clause 12.4(b) at the end of each Fund Year the Trustee must determine the Fund Earning Rate, after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable.
- (d) Subject to clause 15.4(e), an amount determined by application of the Fund

Earning Rate must be allocated from the Income Account to each Accumulation Account and Pension Account in proportion to the amount standing to the credit of that account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the account since that date.

- (e) Any amount remaining in the Income Account after distribution of earnings under clause 12.4(d) must be transferred to a Reserve Account established under clause 12.5.
- (f) In the event that the Trustee is required to establish a Fund Earning Rate in respect of a part of a Fund Year, then such interim Fund Earning Rate for that period will be determined by the Trustee in accordance with the Relevant Law on a basis which the Trustee considers to be equitable. The Trustee must, when required by the Regulator or the Relevant Law, notify the Members of the basis of the calculation of the interim Fund Earning Rate.

## **12.5 Reserve Account**

- (a) The Trustee has power at any time to establish one or more Reserve Account(s) of the Fund. Subject to the Relevant Law, a Reserve Account may be credited with the following:
  - (i) an amount transferred from the Income Account under clause 12.4;
  - (ii) some or all of the proceeds of any Policy;
  - (iii) such portion as the Trustee considers appropriate of an amount paid into the Fund as a transfer or Roll-Over Superannuation Benefit;
  - (iv) an amount transferred from the Forfeiture Account under clause 26.4(f); and
  - (v) such other amounts as the Trustee considers appropriate.
- (b) Money held in a Reserve Account does not form part of any Accumulation Account or Pension Account. Any income earned by the Fund on the money held in a Reserve Account must be credited to that Reserve Account.
- (c) A Reserve Account may, at the discretion of the Trustee, be used for the following purposes:
  - (i) to generally give effect to any reserving strategy established by the Trustee to stabilise the investment earnings of the Fund;
  - (ii) to maintain a solvency or other reserve as the Trustee determines to be necessary or appropriate in connection with the payment of a Pension from the Fund;
  - (iii) to make an Anti-Detriment Payment;
  - (iv) to provide for such contingencies as the Trustee may determine;
  - (v) to augment the Fund Earning Rate;
  - (vi) to meet any Taxation payments payable by the Fund;
  - (vii) to pay any expenses or charges payable by the Fund;
  - (viii) to or for the benefit of any Member, Pensioner, Beneficiary or former Member including augmentation of an Accumulation Account or Pension

Account or on any other basis that does not breach the Relevant Law; and

- (ix) for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

#### **12.6 Adjustment of Accumulation Account or Pension Account**

In determining the amount standing to the credit of an Accumulation Account or Pension Account at the time a Benefit is calculated or becomes payable, the Trustee must make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as, in its discretion, it considers equitable, and in accordance with the Relevant Law. The Income Account must be debited or credited accordingly.

#### **12.7 Other Accounts**

The Trustee may from time to time establish such other accounts as it considers necessary or convenient for the proper administration of the Fund or as required by the Relevant Law.

#### **12.8 Valuation of the Fund**

- (a) At the end of each Fund Year or at such other time as the Trustee considers appropriate, or as the Relevant Law requires, the Trustee must:
  - (i) make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date; and
  - (ii) determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account or the relevant sub-account referred to in clause 15.4(d).
- (b) The value so determined in respect of each asset must then be reflected in the balance sheet and other accounts of the Fund.

### **13 FUND RECORDS, DISCLOSURE AND INVESTIGATION**

#### **13.1 Receipt and Payment of Money**

All money of the Fund must be lodged as soon as practicable to the credit of:

- (a) an account in the name of the Fund kept with a bank or other authorised deposit-taking institution as determined from time to time by the Trustee;
- (b) an Insurer for the payment of premiums; or
- (c) the trust account of a solicitor, accountant or Investment Manager appointed under this Deed.

#### **13.2 Issue of Receipts**

A receipt given on behalf of the Fund by the Trustee or any other person who may from time to time be authorised by the Trustee in writing to receive any money of the Fund is a sufficient discharge of the person by whom the money is paid in respect of the amount paid.

#### **13.3 Records and Accounts to be Kept**

The Trustee must arrange for:

- (a) the keeping of accounts of all money received into and disbursed from the Fund and of all dealings in connection with such money;
- (b) the collection and prompt payment into an authorised account of the Fund or the otherwise appropriate dealing with all money due to the Fund;
- (c) the keeping and safe-custody of all records, books, accounts, minutes, reports and



other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law;

- (d) the preparation of an annual balance sheet of the Fund, a statement of financial position, an operating statement or such other or additional accounts and statements in respect of each Fund Year as are required by the Relevant Law; and
- (e) the preparation and lodgement of an annual return to the Regulator and of such other certificates, statements, forms, documents and information in such manner and within the time required by the Relevant Law.

#### **13.4 Audit**

The Trustee must:

- (a) make suitable arrangements for the auditing of the accounts, books and relevant records of the Fund by the Auditor annually or at such other times as required by the Relevant Law; and
- (b) obtain from the Auditor such certificates, statements, forms and other documents at such time and in such form as required by the Relevant Law.

#### **13.5 Disclosure and Reporting Requirements**

The Trustee must arrange to provide to:

- (a) any Member, Pensioner and Beneficiary;
- (b) the Regulator;
- (c) any court;
- (d) any Actuary;
- (e) any Auditor; and
- (f) any other persons specified in the Relevant Law,

such information or documentation, at such time and in such manner as is required by the Relevant Law.

### **14 FUND TRUSTEE – APPOINTMENT AND REMOVAL**

#### **14.1 Nature of Trustee**

The Trustee must at all times be a person, persons or body which is or are eligible to be the Trustee under clause 14.2.

#### **14.2 Eligibility for Appointment as Trustee**

The following persons or bodies are eligible to be the Trustee:

- (a) Individual Trustees who are not Disqualified from holding office as Trustees;
- (b) a Constitutional Corporation which is not Disqualified from holding office as Trustee; and
- (c) such other persons or bodies as satisfy the Relevant Law or are appointed by the Regulator under the Relevant Law.

#### **14.3 Corporate Trustee**

Subject to clause 14.8, where the Trustee is a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:
  - (i) a Constitutional Corporation, the Director of which is the Member; or

- (ii) a Constitutional Corporation, the Directors of which are the Member and another person who is a Relative of the Member; or
  - (iii) a Constitutional Corporation, the Directors of which are the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person;
- (b) while the Fund has more than one Member but less than five Members, a Constitutional Corporation of which all the Directors are the Members.

#### **14.4 Individual Trustees**

Subject to clause 14.8, where the Trustee is not a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:
  - (i) the Member and another person who is a Relative of the Member acting as Individual Trustees; or
  - (ii) the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person, acting as Individual Trustees;
- (b) while the Fund has more than one Member but less than five Members, all the Members acting as Individual Trustees.

#### **14.5 Later Trustees or Directors**

Subject to clause 14.8, the Members must put in place arrangements to ensure that:

- (a) where the Trustee is comprised of Individual Trustees, before a person commences to act as an Individual Trustee; or
- (b) where the Trustee is a Constitutional Corporation, before a person is appointed as a Director of the Trustee,

the Members are satisfied that the person will become a Member under clause 8.1 at the time of their commencement or appointment.

#### **14.6 Ceasing to be Trustee**

If at any time the trusteeship of the Fund does not meet the requirements of either clauses 14.3, 14.4 or 14.8, the Members must:

- (a) complete such arrangements as are necessary under clause 14.9; and
- (b) ensure that the trusteeship of the Fund meets those requirements no later than 6 months after the trusteeship ceased to meet those requirements.

#### **14.7 Continuity of Office**

Any person who acts as an Individual Trustee must, on any other person becoming or ceasing to be a Trustee, under this clause 14, do everything necessary to vest the Fund in the new or remaining Trustees and must deliver all records and other books to the new or remaining Trustees.

#### **14.8 Other Persons as Trustees or Directors**

The Members may, and must if such action is required in order to prevent the Trustee or Constitutional Corporation from ceasing to meet the requirements under the Relevant Law which relate to the nature and composition of the trustees of Self Managed Superannuation Funds, unless the Fund is to cease to be a Self Managed Superannuation Fund under

clause 2.3, take such steps as are necessary to appoint and remove the following persons as an Individual Trustee or a Director of a Constitutional Corporation which is the Trustee:

- (a) the Legal Personal Representative of a deceased former Member in place of the deceased former Member, during the period:
  - (i) beginning when the deceased former Member died; and
  - (ii) ending when death Benefits commence to be payable in respect of the deceased former Member; or
- (b) the Legal Personal Representative of a Member in place of the Member, during any period when:
  - (i) the Member is under a legal disability; or
  - (ii) the Legal Personal Representative has an enduring power of attorney in respect of the Member; or
- (c) the Legal Personal Representative or the parent or guardian of a Member who is under a legal disability because of age in place of the Member; or
- (d) an acting trustee of the Fund appointed under the Superannuation Industry (Supervision) Act 1993.

Where a Legal Personal Representative appointed as provided under this clause 14.8 consists of more than one person, whether acting jointly or jointly and severally, that Legal Personal Representative shall have one vote only.

Any other person may also be a Trustee, or a Director of a Constitutional Corporation which is the Trustee, if the Relevant Law permits that the person may be a Trustee or Director of a Constitutional Corporation which is the Trustee and the Fund would remain a Self Managed Superannuation Fund.

#### **14.9 Appointment of Trustee**

- (a) On the establishment of the Fund, the Trustee is the person, persons or body named and described in Schedule A as the Trustee.
- (b) At all other times, and subject to clause 14.8, the Members must determine who will act as Trustee in accordance with this clause 14 and the Relevant Law for the Fund to be maintained as a Self Managed Superannuation Fund and must take such steps as are necessary to appoint or remove the persons or body to or from the office of Trustee.
- (c) The appointment or removal of a Trustee must be in writing and must immediately be advised to any other Trustee.
- (d) For the purposes of clause 14.9(b) the Members may accept the resignation in writing of any Trustee.
- (e) In the event that there are no Members remaining in the Fund:
  - (i) where former Members survive, the former Members or the Legal Personal Representatives of the former Members; or
  - (ii) where no former Members survive, the Legal Personal Representatives of the former Members,
 must determine who will act as Trustee for the Fund.

**14.10 Trustee Declarations**

Each person who is an Individual Trustee or who is a Director of a Constitutional Corporation that is the Trustee must do all such things, make all such declarations and execute all such documents as are required under the Relevant Law to be done, made or executed by a person who holds or who commences to hold such office.

**15 TRUSTEE'S INVESTMENT POWERS****15.1 Authorised Investments**

Money forming part of the Fund from time to time which is not required immediately for the payment of Benefits and other amounts authorised by this Deed must be invested in accordance with the investment strategies of the Fund as determined under clause 3(f) in any one or more of the following investments:

- (a) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (b) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (c) on deposit with any bank or other authorised deposit-taking institution in any type of account, whether secured or unsecured and on such terms as the Trustee may determine;
- (d) on deposit with or on loan to any person or organisation whatsoever (including an Employer which contributes or has contributed to the Fund in respect of a Member) with or without security and at such rate of interest and on such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- (e) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (f) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (g) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (h) the acquisition of any futures, options or other synthetic investment and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Fund; and
- (i) any other investments which the Trustee considers appropriate and which are permitted under the Relevant Law,

and the Trustee has all the powers and authorities necessary to enable it to make each such investment provided that it must not make a loan to or give any financial assistance to a

Member or a Relative of a Member and provided further that the Trustee must ensure that all investments are made and maintained in accordance with the Relevant Law.

#### **15.2 Power to Sell and Vary Investments**

The Trustee has power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

#### **15.3 Interest of Trustee in Investment**

- (a) Subject to clause 15.3(b), the Trustee and any Director of a Constitutional Corporation which is the Trustee have the power and are authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (b) The Trustee and any Director of a Constitutional Corporation which is the Trustee must disclose details of any interest in an investment to which clause 15.3(a) applies in the manner prescribed under the Relevant Law.

#### **15.4 Provision of Investment Choice**

- (a) Without limiting in any way the obligations and powers vested in the Trustee under the preceding provisions of this clause 15, the Trustee may:
  - (i) establish any number of investment strategies;
  - (ii) nominate the assets which will be subject to each particular investment strategy;
  - (iii) offer Members and Beneficiaries the opportunity of having amounts held in one or more of their Accumulation Accounts or Pension Accounts invested in accordance with a particular investment strategy; and
  - (iv) make rules regarding when and how Members may give the Trustee directions in this respect.
- (b) Where a Member or Beneficiary is provided with an opportunity to have an amount in an Accumulation or Pension Account invested under a particular investment strategy or strategies, the Trustee must provide to the Member such information as is required in respect of the investment strategy or strategies by the Relevant Law.
- (c) Where a Member or Beneficiary is provided with an opportunity to have an amount in an Accumulation or Pension Account invested pursuant to a particular investment strategy or strategies and either fails or is unwilling to nominate a particular investment strategy, the Trustee must invest the amount in the Member's or Beneficiary's account in such manner as, in its absolute discretion, it may consider appropriate.
- (d) Where the Trustee establishes more than one investment strategy under clause 15.4(a), it must:
  - (i) establish a sub-account within the Income Account established under clause 12.4 in respect of each strategy; and
  - (ii) debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the

Trustee determines.

- (e) Where the Trustee establishes a sub-account under clause 15.4(d), it must:
- (i) determine a Fund Earning Rate in respect of each sub-account;
  - (ii) allocate an amount determined by the application of the Fund Earning Rate in respect of each sub-account to each sub-account within a Member's or Beneficiary's Accumulation or Pension Accounts in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the relevant sub-account within the Member's or Beneficiary's account at the beginning of the Fund Year in respect of which the allocation is being made; and
  - (iii) make an appropriate adjustment for amounts (if any) credited or, debited to the sub-account during that Fund Year.

## **16 TRUSTEE'S POWERS OF MANAGEMENT**

### **16.1 Additional Powers**

In addition to the powers which it might have by law and which are otherwise granted to it by this Deed, the Trustee has the following powers:

- (a) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members and Beneficiaries;
- (b) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members and Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member, former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of this Deed and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (c) to borrow moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for the purposes of acquiring an asset (other than an asset that the Trustee is prohibited by applicable law from acquiring) upon such terms with or without security or interest as the Trustee deems fit and to give, or to authorise the giving of security by mortgage, charge (whether fixed or floating) or otherwise over the asset. The rights of the mortgagee or chargee shall take priority in all respects over the rights of the beneficiaries hereunder and all other persons whatsoever;
- (d) to permit or to procure that the investments of the Fund or any of them are registered in the name of a custodian or a nominee appointed or approved by the Trustee for such purpose, and to permit or to procure such custodian or nominee to give security over any investment of the Fund registered in the name of such custodian or nominee for the purpose of securing the repayment of borrowings of the Trustee where the proceeds of such borrowings were applied in the acquisition of the relevant investment, provided that the giving of such security must not breach the Relevant Law;

- (e) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (f) to open and operate an account with any bank or other authorised deposit-taking institution on such terms as the Trustee may determine;
- (g) to purchase an Annuity from an Insurer in order to provide all or a part of any Pension payable in respect of a Member and in the name of the Trustee or, if the Trustee determines, in the name of the Member;
- (h) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration and conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (i) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its non-Trustee services provided to the Fund in a separate professional capacity;
- (j) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or any investment of the Fund or to the rights of Members, former Members and Beneficiaries in respect of the Fund provided that an indemnity may only be provided to the extent it is not limited by or would be inoperative under the Relevant Law;
- (k) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;
- (l) to appoint a person to chair the meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, may pay a fee or remuneration to such person in respect of such position;
- (m) to insure and keep insured as it sees fit any liability of:
  - (i) the Trustee;
  - (ii) any Directors or officers of a Constitutional Corporation which is the Trustee; or
  - (iii) the Fund to indemnify or reimburse the Trustee or its Directors or officers of a Constitutional Corporation which is the Trustee under clause 18 and clause 19;
- (n) to enter into any agreement, provide any notice, make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (o) to seek modifications of or exemptions from the application of the Relevant Law to the Fund and the Trustee is relieved from complying with any provision of the

Relevant Law in respect of which an exemption or a modification has been granted;

- (p) open any account or accounts with any financial institution and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument; and
- (q) generally to do all acts and things that the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

## **16.2 Exercise of Trustee Powers**

- (a) Subject to clause 16.2(b) all the powers and discretions conferred on the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director of a Constitutional Corporation which is the Trustee may:
  - (i) have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion; or
  - (ii) may benefit directly or indirectly as a result of the exercise of any such power or discretion,
 notwithstanding that the Trustee for the time being is the sole Trustee.
- (b) The Trustee and any Director of a Constitutional Corporation which is the Trustee must disclose details of any interest to which clause 16.2(a) applies in the manner prescribed under the Relevant Law.

## **16.3 Trustee Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed:

- (a) has an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which is final and binding; provided that,
- (b) the Trustee must not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination; and
- (c) the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed must be made as required under, and so as not to breach, the Relevant Law, and any such purported exercise shall be of no effect to the extent that it is not made as required under the Relevant Law or would, if effective, breach the Relevant Law.

## **16.4 Trustee Delegation**

The Trustee may:

- (a) appoint an attorney or delegate to any person any of the powers, duties and discretions conferred on it under this Deed on such terms and conditions as it may determine and may, without limiting the generality of the foregoing, in writing delegate the exercise of all or any of the powers or discretionary authorities hereby



conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose; and

(b) vary, limit or revoke any such appointment or delegation, provided that any such delegation may only be undertaken in accordance with the Relevant Law.

#### **16.5 Trustee Direction**

Except as provided in this Deed and in such circumstances which are permitted under the Relevant Law, the Trustee is not subject to direction by any person in the exercise of any of its powers.

### **17 LIMITATION OF LIABILITY**

#### **17.1 Liability of Trustees, Directors and Officers**

Neither the Trustee nor the Directors or officers of a Constitutional Corporation which is the Trustee is liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except if that person:

- (a) fails to act honestly;
- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- (c) incurs a monetary penalty in respect of a civil penalty order under the Relevant Law.

#### **17.2 Loss, Default, Bona Fide Acts, Mistake**

Without limiting the generality of the exemption from liability under clause 17.1, the Trustee will not incur any liability for:

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) any act or default of any former Trustee or any Director or officer of a former corporate Trustee, of any Member or of any agent employed in good faith by the Trustee;
- (c) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee; or
- (d) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

#### **17.3 Limitation of Exemption from Liability**

This clause 17 operates only to exempt a person from liability to the extent that the provision of such an exemption is not limited by or inoperative under the Relevant Law.

### **18 INDEMNITY OF TRUSTEE**

#### **18.1 Indemnity and Lien**

The Trustee and where applicable its Directors and officers shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise, purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them under this Deed or at law except if that person:

- (a) fails to act honestly; or
  - (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
  - (c) incurs a monetary penalty under the Relevant Law,
- and the Trustee will have a lien on and may use the money representing the assets of the Fund for the purposes of this indemnity.

#### **18.2 Payments in Good Faith**

This indemnity extends to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

#### **18.3 Opinion or Advice**

This indemnity extends to circumstances where the Trustee acts on the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and on reasonable grounds to be expert in relation to the matters on which they are consulted.

#### **18.4 Failure to Carry Out Agreement**

This indemnity extends to circumstances where there has been a failure of any person or corporation to carry out any agreement made with the Trustee and to circumstances of any act or omission on the part of such person or corporation.

#### **18.5 Agents and Servants of Trustee**

This indemnity extends to circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

#### **18.6 Limitation of Indemnity**

The indemnity provided under this clause 18 in respect of the Trustee or any Directors or officers of the Trustee does not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

### **19 REMUNERATION AND REIMBURSEMENT**

#### **19.1 Remuneration**

The Trustee is not entitled to receive any remuneration from the Fund or any person in relation to the performance of the normal activities of a trustee provided in relation to the Fund.

#### **19.2 Reimbursement**

The Trustee is entitled to be reimbursed from the Fund for and in respect of the following expenses:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties) but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;

- (b) such fees and expenses of the Auditor as the Trustee considers reasonable;
- (c) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (d) all fees, wages and expenses of any barrister, solicitor, accountant, Actuary, fund manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under this Deed;
- (e) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
- (f) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
- (g) all and any costs incurred in relation to an investigation of the Fund, the resolution of disputes or the preparation of information and submissions; and
- (h) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices.

## **20 APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS**

### **20.1 Actuary and Auditor**

The Trustee may and shall if necessary for compliance with the Relevant Law appoint a person or firm to the following offices on such conditions as it determines:

- (a) an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow or who otherwise meets the criteria specified in the Relevant Law for appointment as an Actuary to the Fund; and
- (b) an Auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Law or who otherwise meets the criteria specified in the Relevant Law for appointment as an Auditor to the Fund.

### **20.2 Administration Manager**

The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required by the appointee, one or more companies, persons or organisations to act as the Administration Manager of the Fund, to carry out some or all of the administration of the Fund. Such appointment may be made on such terms and conditions as the Trustee considers appropriate.

### **20.3 Investment Manager**

- (a) The Trustee has power to appoint in writing one or more persons or companies to act as an Investment Manager for the Fund for such period and on such terms and conditions as the Trustee determines provided that the person or company is qualified to act as an investment manager for the Fund under the Relevant Law and the terms and conditions of appointment are in accordance with and comprise all the requirements of the Relevant Law.

- (b) The Trustee may delegate to any Investment Manager such powers, discretions and authorities relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to such Investment Manager as the Trustee determines and may reallocate assets of the Fund being invested by that Investment Manager.

#### **20.4 Custodian**

The Trustee has power to appoint one or more persons or companies to act as a custodian for the Fund for such period and on such terms and conditions as the Trustee determines and may delegate and confer on such custodian such powers, discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund as the Trustee determines provided that the person or company appointed to act as custodian is not prohibited from so acting under the Relevant Law.

#### **20.5 Consultants and Officers**

The Trustee from time to time may appoint such other consultants and officers as it considers desirable for the proper management and administration of the Fund.

#### **20.6 Removal**

The Trustee may remove from office any person or company appointed to any position under this clause 20 and must remove any such person or company where so required by the Relevant Law.

### **21 ACTUARIAL INVESTIGATIONS**

In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee is under no obligation to be bound by or to act on the advice so provided except in circumstances required by the Relevant Law.

### **22 CONTRIBUTIONS TO FUND**

#### **22.1 Member and Employer Contributions**

A Member or (if applicable) an Employer may, subject to any contributions cap under the Relevant Law which applies so as to prohibit or restrict the contribution of an amount, contribute to the Fund in respect of a Member such amount and in such manner and at such times as each of them in their absolute and uncontrolled discretion determines.

#### **22.2 Designation of Class Entitlements**

- (a) Where:
- (i) a Member makes a Contribution; or
  - (ii) an Employer makes a Contribution in respect of a Member who is a Member of more than one membership class,  
the Member or the Employer must designate in relation to the Contribution (or in respect of all future Contributions):
  - (iii) which membership class or classes the Contribution is being made to;  
and
  - (iv) the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts.

- (b) The allocation of Contributions made by an Employer may be determined by the Trustee in consultation with the Member.

### **22.3 Contributions in Cash or Assets**

Any Contributions made by a Member or an Employer may be made to the Trustee either in cash or by transfer of an asset or assets provided that:

- (a) the assets transferred must be authorised investments as set out in clause 15.1; and
- (b) any transfer of an asset under this clause 22.3 must only be made on the terms and conditions permitted under the Relevant Law.

### **22.4 No Obligation to Contribute**

In the absence of any agreement to the contrary, a Member is not under any obligation to make a Contribution to the Fund in respect of any Fund Year and a Member may remain a Member notwithstanding that a Contribution is not made in respect of that Member in respect of any Fund Year.

### **22.5 Acceptance of Contributions**

Subject to this clause 22, the Trustee may accept any Contribution or Shortfall Component made by or in respect of a Member that is permitted by the Relevant Law, but must not accept any Contribution or any Shortfall Component:

- (a) if the Regulator so directs;
- (b) if the Contributions are not employer contributions made in respect of the Member, if the Member's Tax File Number has not been quoted to the Trustee as required under the Relevant Law; or
- (c) to the extent that the Contributions exceed a contributions cap applying under the Relevant Law, which contributions cap applies so as to prohibit or restrict the acceptance of any Contributions or part thereof by the Trustee.

### **22.6 Ineligible Contributions**

If the Trustee ascertains at any time that any Contribution or Shortfall Component or part thereof has been received by the Trustee in breach of the provisions of this clause 22, the Trustee must refund such Contribution or Shortfall Component (in whole or in part as the case requires) within any time period which may be required by the Relevant Law, less any:

- (a) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to the Contribution or Shortfall Component; and
- (b) reasonable administration and transaction charges,

in each case to the extent permitted under the Relevant Law, and reduce the Benefits held for the Member in the Fund to those which would have been held if such Contribution or Shortfall Component had not been received. The Trustee shall hold all Contributions or Shortfall Components received in breach of the provisions of this clause 22, pending their refund, as a bare trustee for the person entitled to such refund.

### **22.7 Spouse and Other Contributions**

The Trustee may, with the consent of a Member, accept Contributions in any form permitted by the Relevant Law made to the Fund in respect of the Member and, without limiting the generality of this clause 22.7, accept Contributions by the Spouse of a Member or from the

trustee of a Complying Superannuation Fund of which the Spouse of a Member is a member, where such Contributions result from a Contribution Split by the Spouse in favour of the Member, notwithstanding that the Spouse may also be a Member in their own right.

## **22.8 Must Allocate Contributions**

The Trustee must allocate Contributions to Members within 28 days of the end of the month in which the Contribution is received or such longer period as is reasonable in the circumstances.

## **23 TRANSFERS AND ROLL-OVERS TO APPROVED BENEFIT ARRANGEMENTS**

### **23.1 Request for Transfer or Roll-Over to Approved Benefit Arrangement**

Where a Member or Beneficiary is a member of or is eligible to join any Approved Benefit Arrangement and requests:

- (a) the transfer of the whole or part of his or her Benefit Entitlement; or
- (b) the roll-over of the whole or part of his or her Benefit,

then the Trustee must transfer the whole or any part of the amount in the Fund representing the relevant Benefit Entitlement or Benefit to the trustee of the Approved Benefit Arrangement or, where the Approved Benefit Arrangement is the Fund, to another account maintained in the Fund for the Member or Beneficiary, provided that a transfer or roll-over may only be made under this clause 23.1 where the Trustee is satisfied that the transfer or roll-over is permitted by, and is made in accordance with, the Relevant Law.

### **23.2 Amount of Transfer**

The amount of a Member's Benefit Entitlement to be transferred under clause 23.1 must not, subject to clause 45, exceed the amount standing to the credit of the relevant Member's account.

### **23.3 Effect, Method and Timing of Transfer or Roll-Over**

- (a) The Member or Beneficiary must complete and execute any documentation required by the Relevant Law or otherwise notified to the Member or Beneficiary by the Trustee as being necessary or desirable to enable the Trustee to complete the transfer or a Roll-Over Superannuation Benefit to the Approved Benefit Arrangement or to another account within the Fund in accordance with the Relevant Law.
- (b) Upon receipt of a Member's request for a transfer or roll-over under clause 23.1, the Trustee must transfer or roll-over the relevant amount as soon as practicable and in any case within such period as is required by the Relevant Law.
- (c) The receipt of a transfer or Roll-Over Superannuation Benefit by the proper officer of the Approved Benefit Arrangement will constitute a complete discharge of the Trustee of all liabilities in respect of the transferred or rolled over amount and the Trustee has no responsibility to see to the application of the transferred or rolled over amount.
- (d) On the completion of a transfer or Roll-Over Benefit in respect of a Member or Beneficiary under this clause 23 to an Approved Benefit Arrangement other than the Fund, all the rights and interest of that Member or Beneficiary under this Deed (and all the rights and interest of any person otherwise entitled to claim in respect

of the Member or Beneficiary or on the occurrence of any event or circumstances affecting the Member or Beneficiary) in respect of the amount paid are entirely extinguished.

#### **23.4 Contribution Split**

The Trustee must give effect to a Contribution Splitting Application lodged by a Member if such application specifies the matters required under the Relevant Law to be specified in such an application and is not an invalid application for the purposes of the Relevant Law.

### **24 TRANSFERS AND ROLL-OVERS WITHOUT CONSENT**

#### **24.1 Successor Fund Transfers**

Subject to clause 24.2, the Trustee may transfer the whole or part of a Member's Benefit Entitlement to an Approved Benefit Arrangement without the request or consent of the Member where the Approved Benefit Arrangement is a successor fund within the meaning of the Relevant Law. The Trustee may transfer the Member's Benefit Entitlement to such an Approved Benefit Arrangement whether or not the Member is at the time of the transfer a participant in that Approved Benefit Arrangement.

#### **24.2 Eligible Roll-Over Funds**

In accordance with the Relevant Law the Trustee may, without the request or consent of a Member or Beneficiary, and, where required by the Relevant Law, the Trustee must:

- (a) transfer a Member's Benefit Entitlement or roll-over a Member's or Beneficiary's Benefit to an Eligible Roll-Over Fund; and
- (b) provide any information to the trustee of the Eligible Roll-Over Fund at such time and in such manner as required by the Relevant Law.

### **25 TRANSFERS AND ROLL-OVERS FROM APPROVED BENEFIT ARRANGEMENTS**

#### **25.1 Transfer or Roll-Over of Benefit Entitlements or Benefits**

Where a Member or Beneficiary is a member or beneficiary of any other Approved Benefit Arrangement the Trustee may by resolution acquire by transfer or roll-over from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of the Approved Benefit Arrangement or the interest of any person who is a participant or former participant in that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member or beneficiary of the Approved Benefit Arrangement at the time of the transfer or roll-over.

#### **25.2 Rights and Entitlements in Transferred Benefit Entitlements or Benefits**

The Trustee must hold any amounts transferred or rolled over in accordance with clause 25.1 as part of the Fund and reflect such equivalent rights, entitlements and interests in the particular Member's Accumulation Account or the particular Member's or Beneficiary's Pension Account as existed in the other Approved Benefit Arrangement and are required pursuant to the terms on which the transfer or roll-over was effected and, if the Trustee so determines, the Member or Beneficiary may be deemed to have become a Member or Beneficiary on the date the Member became a member of the Approved Benefit Arrangement from which the Benefit Entitlement or Benefit was transferred or rolled over.

## **26 FORFEITURE OF BENEFIT ENTITLEMENTS**

### **26.1 Conditions of Forfeiture**

Any Member or Beneficiary or after the death of a Member, any of the Dependants of the Member:

- (a) who assigns or charges or attempts to assign or charge any Benefit Entitlement other than as permitted under the Relevant Law;
- (b) whose interest in any Benefit Entitlement, whether by the Member's or Beneficiary's own act, operation of law, an order of any court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (c) who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit Entitlement or who, in the opinion of the Trustee is incapable of managing the person's affairs; or
- (d) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation,

forfeits entitlement to any Benefit Entitlement held in the Fund at that time by that person provided however that this clause 26.1 only applies to the extent that it is not limited by or inoperative under the Relevant Law. The Trustee must not recognise an assignment or charge of a Benefit Entitlement which is prohibited under the Relevant Law, and may in its absolute discretion recognise or decline to recognise an assignment or charge of a Benefit Entitlement which is permitted under the Relevant Law.

### **26.2 Accumulation Account Residue**

Any Member, former Member or Beneficiary:

- (a) who has been paid all Benefits which the Trustee considers should be paid under the provisions of this Deed; and
- (b) who still has a residual amount standing to the credit of their Accumulation Account,

forfeits such amount and such amount must be dealt with as a forfeited Benefit Entitlement.

### **26.3 Forfeiture Account**

- (a) The Trustee has power at any time to establish a Forfeiture Account and must transfer to the credit of a Forfeiture Account any amounts forfeited under clause 26.1 or clause 26.2 or otherwise forfeited in accordance with this Deed.
- (b) Any money held in a Forfeiture Account does not form part of any Accumulation Account and any income derived by the Fund on the money held in the Forfeiture Account must be credited back to the Forfeiture Account.
- (c) A Forfeiture Account must be applied in accordance with the remaining provisions of this clause 26.

### **26.4 Application of Forfeited Benefit Entitlements**

The Trustee must pay or apply any amounts which have been forfeited and are held in a Forfeiture Account in any one or more of the following ways:

- (a) to or for the benefit of the Member or Beneficiary who forfeited the amount (as the case requires) or to the Dependants of the Member or Beneficiary or any one or



more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;

- (b) to the trustee of the estate of the Member or Beneficiary who forfeited the amount;
- (c) to or for the benefit of the Member or Beneficiary who forfeited the amount (as the case requires) or to the Dependants of the Member or Beneficiary to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (d) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- (e) for the provision to other Members or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances;
- (f) for crediting to a Reserve Account to be applied in accordance with clause 12.5;
- (g) for any other purpose approved in writing by the Regulator,

provided that the Trustee may only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law. For the purposes of this clause 26.4, Member and Beneficiary includes former Member or former Beneficiary.

#### **26.5 Readjustment of Member Interest**

Where a forfeiture of a Benefit Entitlement occurs under this clause 26 in respect of a Member, and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect that Member, then the Trustee may:

- (a) readjust any rights, entitlements or interests of the Member in the Fund; and
- (b) provide the Member with such rights or entitlements as the Trustee considers appropriate,

provided that the rights or entitlements must not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

#### **26.6 Severability**

If any part of this clause 26 is determined to be illegal, invalid or void, the legality and validity of the remaining parts of it will not be affected and the illegal, invalid or void part is deemed to be deleted.

### **27 INCOME STREAMS - PENSIONS AND ANNUITIES**

#### **27.1 Determination to Pay Pension or Annuity**

At such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary in accordance with the terms of this Deed or in accordance with the Relevant Law, notwithstanding any other provision of this Deed, the Trustee may at the request of the Member or Beneficiary and on such terms as the Trustee and Member or Beneficiary may agree but otherwise on such terms as the Trustee determines if the Member or Beneficiary is under a legal disability:

- (a) **Pension**  
determine to pay a pension or pensions from the Fund to the Member or Beneficiary (as the case might be) on the conditions set out in this Deed:

- (i) in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
  - (ii) in respect of any amounts credited to the Pension Account of a Member or Beneficiary in accordance with clause 27.4(a)(ii);
- (b) **Annuity**
- determine, subject to the Relevant Law, to expend the Benefit payable from the Fund in the purchase or acquisition of an Annuity or Annuities in the name of the Member or Beneficiary to provide to the Member or Beneficiary the right to an income stream(s) payable from the Annuity provider of one or more of the kinds referred to in clause 27.2:
- (i) in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
  - (ii) in respect of any amounts credited to the Pension Account of a Member or Beneficiary under clause 27.4(a)(ii).

## **27.2 Choice of Pension**

For the purposes of clause 27.1(a) the Member or Beneficiary may request the Trustee to pay and the Trustee may pay a Pension or Pensions in any of the following ways:

- (a) an Account-Based Pension in accordance with the relevant conditions set out in clause 28;
- (b) a Non-Commutable Account-Based Pension in accordance with the relevant conditions set out in clause 29;
- (c) if the Trustee is satisfied that the Pension is to be paid from the proceeds of a Roll-Over Superannuation Benefit that resulted from the commutation of a pension provided under rules that met standards specified for the purpose under SIS, a Market-Linked Pension in accordance with the relevant conditions set out in clause 30; or
- (d) any other type of Pension in accordance with the conditions set out in clause 31.1.

## **27.3 Establishment of Pension Account**

- (a) Where the Trustee determines to pay all or any part of the Benefit to the Member or the Beneficiary as a Pension or Pensions the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which accounts the Trustee must transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.
- (b) The Trustee must not permit a Pension Account to be added to by way of contribution or by way of credit of a Roll-Over Superannuation Benefit or in any other manner prohibited under the Relevant Law after payment of a Pension has commenced from that Pension Account.
- (c) For the purposes of financing a Pension to be paid from the Fund under clause 27.2, the Trustee may purchase or acquire an Annuity in respect of the Member payable to the Trustee.

**27.4 Operation of Pension Account**

- (a) The following amounts must be credited to the Pension Account of a Pensioner:
- (i) any amount transferred under clause 27.3;
  - (ii) any amount paid into the Fund in respect of a Pensioner as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to credit;
  - (iii) the proceeds of any Policy or Annuity effected by the Trustee in respect of a Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
  - (iv) such earnings of the Fund ascertained in accordance with clauses 12.4 and 15.4(e) as the Trustee may determine to be equitable;
  - (v) any credit arising out of any adjustments made in accordance with clause 12.6;
  - (vi) any Shortfall Component paid in respect of the Pensioner;
  - (vii) any amount of Financial Assistance which the Trustee considers it appropriate to credit;
  - (viii) such other Contributions made in respect of the Pensioner which are permitted by this Deed and the Relevant Law;
  - (ix) any amounts transferred to the Pension Account from a Reserve Account; and
  - (x) such other amounts as the Trustee determines from time to time.
- (b) The following amounts are to be debited to the Pension Account of a Pensioner:
- (i) any amount paid out of the Fund in respect of a Pensioner as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to debit;
  - (ii) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary under this Deed;
  - (iii) the costs of any Policy or Annuity effected by the Trustee in respect of the Pensioner which are not debited to an Accumulation Account in accordance with clause 12.3;
  - (iv) such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of a Roll-Over Superannuation Benefit as the Trustee may determine;
  - (v) such of the costs, charges and expenses incurred under clause 19 or an appropriate portion thereof as the Trustee may determine;
  - (vi) the amount of any lien exercised under clause 18 or an appropriate portion thereof as the Trustee may determine;
  - (vii) any amount forfeited under clauses 26.1, 26.2 or 33.4(c);
  - (viii) a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee may determine;

- (ix) such negative earnings as may be determined by the Trustee in accordance with clauses 12.4, 12.6 and 15.4(e);
- (x) any amount paid in respect of the Trustee indemnity under clause 18 or an appropriate portion thereof as the Trustee may determine;
- (xi) any amount transferred to the Accumulation Account of a Pensioner;
- (xii) the amount of any Levy determined by the Trustee to be appropriate to debit;
- (xiii) the amount of any Taxation attributable to the Pensioner;
- (xiv) such amount as is referred to in a Release Authority given by a Pensioner to the Trustee and which is paid by the Trustee to the Pensioner or to the Commissioner in accordance with such Release Authority; and
- (xv) such other amounts as the Trustee may determine from time to time.

### **27.5 Segregation of Pension Assets**

In relation to each Pension payable to a Member or Beneficiary, the Trustee:

- (a) may segregate or set apart the assets which represent the Pension Account of the Member or Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current liabilities in relation to the payment of Superannuation Income Stream Benefits as those liabilities fall due for payment and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current pension liabilities as the Trustee considers appropriate for the purposes of the Tax Act or as the Relevant Law may require; and
- (b) where the Trustee segregates assets for the purposes of clause 27.5(a), the Trustee must annually, and at such other times as the Trustee determines, review the value of the assets so segregated for the purposes of ensuring the value of the assets is sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits. Where the value of the segregated assets is not sufficient or is more than sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits, the Trustee may take such action in relation to those assets as is permitted by the Relevant Law and must take such action as is required by the Relevant Law.

### **27.6 Actuarial Certification**

Where the Trustee determines to pay a Pension under clause 27.2, the Trustee must obtain such certification, at such times and in such form from an Actuary in relation to the Pension or the Fund as is required by the Relevant Law.

## **28 ACCOUNT-BASED PENSION PAYMENT CONDITIONS**

### **28.1 Method of Payment and Security of Account-Based Pension**

Where an Account-Based Pension is payable from the Fund, the following conditions will apply in relation to its payment:

- (a) the Account-Based Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;

- (b) the Account-Based Pension must be paid at least annually;
- (c) the amount of the Account-Based Pension in any year will be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time, provided that the amount must not be greater than or lesser than the amounts calculated as the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of an Account-Based Pension;
- (d) the Account-Based Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary Beneficiary, or on such other terms as are permitted by the Relevant Law;
- (e) the capital value of the Account-Based Pension and the income from it cannot be used as security for a borrowing; and
- (f) where the Relevant Law identifies matters that are immaterial for determining whether an Account-Based Pension meets the standards set by the Relevant Law, the Trustee will also treat such matters as immaterial.

## **28.2 Death of a Pensioner**

- (a) If a Pensioner dies while still in receipt of an Account-Based Pension under this Deed, the Trustee must commence to pay the Account-Based Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a benefit in the form of a pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
- (b) In the event of the death of a Pensioner in respect of an Account-Based Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:
  - (i) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee; or
  - (ii) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a benefit in the form of a pension under the Relevant Law,
 the balance of such Pension Account must be dealt with in accordance with clause 33.

## **28.3 Commutation of Account-Based Pension**

- (a) The Trustee:
  - (i) may on its own initiative or on receipt of a written application from a Pensioner commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner where the Relevant Law permits the commutation of that Account-Based Pension, on and subject to such terms and conditions as apply to the commutation under the Relevant Law; and

- (ii) must commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner where the Relevant Law so requires.
- (b) The Trustee must:
  - (i) pay the proceeds of the commutation in respect of the Account-Based Pension being commuted to the relevant Pensioner or to the Legal Personal Representative of the relevant Pensioner; or
  - (ii) at the request of the Pensioner retain the proceeds of that commutation in the Fund and apply them to the credit of an Accumulation Account on behalf of the Pensioner.
- (c) Following the commutation of a part of an Account-Based Pension, the Trustee must reduce the total amount of the instalments of any Account-Based Pension payable to the Pensioner. This reduction is to be of such an amount as the Trustee considers appropriate.

## **29 NON-COMMUTABLE ACCOUNT-BASED PENSIONS (TRANSITION TO RETIREMENT)**

### **29.1 Request to pay Non-Commutable Account-Based Pension**

Upon a Member or Beneficiary attaining their Preservation Age, the Trustee may, at the request of a Member, pay from the Fund a Non-Commutable Account-Based Pension on the conditions set out in clauses 29.2 and 29.3 and otherwise, subject to the Relevant Law, on such terms as the Trustee and Member or Beneficiary may agree.

### **29.2 Compliance with Relevant Law**

The Trustee may only pay a Non-Commutable Account-Based Pension to a Member or Beneficiary in accordance with the Relevant Law.

### **29.3 Method of Payment and Security of Non-Commutable Account-Based Pension**

Where a Non-Commutable Account-Based Pension is payable from the Fund, the conditions set out in clause 28.1 and the following additional conditions will apply in relation to its payment:

- (a) the total payments (including under a Payment Split) made in respect of the Non-Commutable Account-Based Pension in a financial year shall not exceed any maximum payment amount specified for these purposes in SIS;
- (b) where the Non-Commutable Account-Based Pension is commuted in accordance with this Deed and the Relevant Law, the resulting Superannuation Lump Sum must not be cashed unless:
  - (i) the purpose of the commutation is a purpose which is acceptable under the Relevant Law; or
  - (ii) before the commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction is nil.

## **30 MARKET LINKED PENSION PAYMENT CONDITIONS**

### **30.1 Method of Payment and Security of Market Linked Pension**

Where a Market Linked Pension is payable from the Fund, the following conditions will apply in relation to its payment:

- (a) the Market Linked Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Market Linked Pension must be paid at least annually to the Pensioner throughout a period permitted by the Relevant Law;
- (c) the amount of the Market Linked Pension in any year must be determined in accordance with the Relevant Law for the payment of a Market Linked Pension;
- (d) the Market Linked Pension does not and will not have a residual capital value;
- (e) if the Market Linked Pension reverts, it will not have a reversionary component greater than 100% of the Benefit payable before the reversion;
- (f) the Market Linked Pension cannot be transferred to any person other than on the death of the Pensioner to one of his or her Dependants or to the Legal Personal Representative of the Pensioner; and
- (g) the capital value of the Market Linked Pension and the income from it cannot be used as security for a borrowing.

### **30.2 Death of a Pensioner**

- (a) If a Pensioner dies while still in receipt of a Market Linked Pension under this Deed, the Trustee must commence to pay the Market Linked Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a benefit in the form of a pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
- (b) In the event of the death of a Pensioner in receipt of a Market Linked Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:
  - (i) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee, or
  - (ii) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a benefit in the form of a pension under the Relevant Law,

the balance of such Pension Account must be dealt with in accordance with clause 33.

### **30.3 Commutation of Market Linked Pension**

- (a) The Trustee:
  - (i) may on its own initiative or on receipt of a written application from the Pensioner commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner where the Relevant Law permits the commutation of that Market Linked Pension, on and subject to such terms and conditions as apply to the commutation under the Relevant Law; and
  - (ii) must commute the whole or any part of a Market Linked Pension that is

payable from the Fund to the Pensioner where the Relevant Law so requires.

- (b) The Trustee must pay the proceeds of the commutation in respect of the Market Linked Pension being commuted in a manner permitted under the Relevant Law.
- (c) Following the commutation of a part of a Market Linked Pension, the Trustee must reduce the total amount of the instalments of any Market Linked Pension payable to the Pensioner. This reduction is to be of such an amount as the Trustee considers appropriate.

#### **30.4 Non-Commutable Market Linked Pension (Transition to Retirement)**

- (a) Upon a Member or Beneficiary attaining their Preservation Age, the Trustee may, at the request of a Member pay from the Fund a Non-Commutable Market Linked Pension on the conditions set out in clause 30.4, and otherwise, subject to the Relevant Law, on such terms as the Trustee and Member or Beneficiary may agree.
- (b) The Trustee may only pay a Non-Commutable Market Linked Pension to a Member or Beneficiary in accordance with the Relevant Law.
- (c) Where a Non-Commutable Market Linked Pension is payable from the Fund, the conditions set out in clause 30.1 will apply in relation to its payment, and the additional conditions set out in clause 30.4(d) will apply in relation to its payment.
- (d) Where a Non-Commutable Market Linked Pension is commuted in accordance with this Deed and the Relevant Law, the resulting Superannuation Lump Sum must not be cashed unless:
  - (i) the purpose of the commutation is a purpose which is acceptable under the Relevant Law to cash an unrestricted non-preserved benefit; or
  - (ii) before the commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction is nil.

### **31 OTHER PENSION PAYMENT CONDITIONS**

#### **31.1 Other Pension Types**

If the Relevant Law permits, the Trustee may, at the request of a Member or Beneficiary, pay from the Fund or purchase on behalf of the Member or Beneficiary any type of Pension other than those types of Pensions referred to elsewhere in this Deed, which type of Pension is acceptable to the Regulator and is permitted under the Relevant Law, on such terms required under the Relevant Law, or on such terms as are permitted under the Relevant Law and as the Trustee and Member or Beneficiary may agree.

#### **31.2 Conversion of Pensions**

A Pensioner may elect, by written notice given to the Trustee, to have a Pension which the Pensioner is receiving from the Fund paid in accordance with the conditions applying to a different type of Pension specified in such notice. The Trustee must, subject to the Relevant Law, give effect to such notice received from a Pensioner.

### **32 TRANSFER IN SPECIE**

#### **32.1 Transfer of Policy**

Where:



- (a) a Member or a Beneficiary is entitled to be paid a Benefit; or
- (b) the Trustee in its discretion determines to pay a Benefit to a Member, a Beneficiary or the Dependants of the Member including any interest in a Policy of any kind on the life of the Member or Beneficiary,

the Trustee may, in its absolute discretion and in lieu of surrendering such Policy, assign the Policy to such Member or Beneficiary or to the Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine, and

- (c) the value of such Policy as at the date of assignment must be debited to the relevant Member's or Beneficiary's Accumulation Account or Pension Account; and
- (d) neither the Trustee nor any Employer will be liable to pay any premiums which may become due and payable under the Policy to the extent that they relate to the period after the date of the assignment.

### **32.2 Transfer of Investments**

To the extent permitted under the Relevant Law, the Trustee may, with the consent of a Member or Beneficiary:

- (a) to whom a Benefit is payable; or
- (b) in respect of whom a transfer of a Benefit Entitlement or roll-over of a Benefit under clause 23 is to be made,

transfer or roll-over investments of the Fund of equivalent value to the Member or Beneficiary or to the trustee of the Approved Benefit Arrangement in lieu of paying the whole or part of the amount otherwise payable under the provisions of this Deed.

### **32.3 No Beneficial Interest**

With the exception of the provisions of this clause 32 and clause 15.4, no Member or Beneficiary may have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while such asset or assets remain subject to the provisions of this Deed.

## **33 PAYMENT OF BENEFITS ON DEATH**

### **33.1 Binding Death Benefit Notices**

A Member or Beneficiary may give the Trustee a written notice, in the form set out in Schedule C or in such other form as is prescribed or is accepted by the Trustee, requiring that the Trustee pay Benefits arising on the death of the Member or Beneficiary to a person or persons specified in the notice, being the Legal Personal Representative and/or the Dependants of the Member or Beneficiary, and in such manner or form specified in the notice.

### **33.2 Non-Binding Death Benefit Notices**

A Member or Beneficiary may give the Trustee a written notice, in the form set out in Schedule C or in such other form as is prescribed or is accepted by the Trustee, stating how the Member or Beneficiary wishes the Trustee to pay Benefits arising on the death of the Member or Beneficiary among the person or persons specified in the notice, being the Legal Personal Representative and/or the Dependants of the Member or Beneficiary.

### **33.3 Revocation or Amendment of Binding and Non-Binding Death Benefit Notices**

- (a) A Member or Beneficiary may by notice in writing given to the Trustee at any time

revoke a Binding or Non-Binding Death Benefit Notice.

- (b) A Member or Beneficiary may at any time give the Trustee a subsequent Binding or Non-Binding Death Benefit Notice under clause 33.1 or 33.2, and the receipt of such subsequent notice shall revoke a prior notice given to the Trustee.
- (c) A Binding or Non-Binding Death Benefit Notice will not lapse by reason only of the passage of time.

### **33.4 Payments to Dependants, Legal Personal Representatives or Other Persons**

On the death of a Member or Beneficiary the Trustee must:

- (a) if required by a Binding Death Benefit Notice given by the Member or Beneficiary to the Trustee, pay or apply the Benefit in accordance with that Binding Death Benefit Notice; and
- (b) if the Member or Beneficiary had not given a Binding Death Benefit Notice to the Trustee, or to the extent that a Binding Death Benefit Notice given by the Member or Beneficiary to the Trustee is not in effect or cannot be given effect under the Relevant Law, pay or apply the Benefit to or for the benefit of one or more of the Member's or Beneficiary's Dependants and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee, in its discretion, and taking into account the provisions of any Non-Binding Death Benefit Notice given by the Member or the Beneficiary to the Trustee, determines from time to time; and
- (c) if there are no Dependants and there is no Legal Personal Representative:
  - (i) pay or apply the Benefit for the benefit of such Relatives of the Member or Beneficiary or other persons as the Trustee determines, in such proportions, form, manner and at such times as the Trustee determines; or
  - (ii) if there are no such Relatives or other persons, deal with the Benefit as though it were a forfeited benefit in accordance with clauses 26.3 and 26.4, or as otherwise required under the Relevant Law.

### **33.5 Discharge of Trustee**

The receipt by a Dependant, the Legal Personal Representative, Relative or other person of a Benefit paid under this clause 33 is a complete discharge of the Trustee in respect of any amount paid to that person and the Trustee is not bound to see to the application thereof.

## **34 PAYMENT OF BENEFITS**

### **34.1 Address for Benefits**

Benefits are payable at the principal office for the time being of the Trustee or otherwise as may be determined by the Trustee and advised to the Member or Beneficiary. The Trustee may forward the Benefits to the postal address or bank account of the Member or Beneficiary last notified to the Trustee or to such other place as the Trustee may determine.

### **34.2 Notification of Address**

Every Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Beneficiary, must (except where no further Benefit is payable from the Fund) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Beneficiary changes address of:

- (a) the place of residence of the Beneficiary and the full postal address of that residence; and
- (b) the bank account (if any) to which the Beneficiary requests that the Benefit be paid.

### **34.3 Receipt for Benefits**

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

### **34.4 Notification of Claims and Proofs**

Where a Benefit is payable to or in respect of a Member, prior to payment of the Benefit the Trustee must notify:

- (a) the Member, in the case of a Benefit payable to the Member;
- (b) any person named in a Binding Death Benefit Notice or Non-Binding Death Benefit Notice held by the Trustee in respect of the deceased Member, the Nominated Beneficiary, the Reversionary Beneficiary, the Legal Personal Representative, any known Dependants or any other person who the Trustee reasonably believes may have an entitlement to or an interest in the Benefit, in the case of a Benefit payable on death of a Member; and
- (c) in any other case, such persons as the Trustee reasonably believes may have an entitlement to or interest in the Benefit,

in writing of the period within which the person may seek to claim an entitlement to the Benefit and where a person has produced to the Trustee such evidence, done all such acts and executed all such documents as the Trustee may reasonably require in order to satisfy the Trustee that the person is entitled to the payment of part or all of the Benefit under this Deed, the Trustee must pay such Benefit provided that the Trustee must also notify in writing any person mentioned in clause 34.4 of the period within which the person may object to the payment of the Benefit and may defer the payment of the Benefit until that period for objections has elapsed.

### **34.5 Notification Outside Time Limit**

Where a person has failed to notify the Trustee of a claim or of their intention to make a claim within the period determined by the Trustee under the proviso in clause 34.4, no payment may be made to the person unless the Trustee is satisfied that such a payment may be made from the Fund in accordance with this Deed and the Relevant Law.

### **34.6 No Personal Claim**

No Member or person claiming through a Member or on behalf of a Member or as the Dependant of a Member is entitled to require payment of that Member's interest in the Fund except as may be provided in this Deed.

### **34.7 Payment to Others on Behalf of Beneficiaries**

When any Beneficiary is under the age of 18 years or is under any legal disability or in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit in such one or more of the following ways as the Trustee may determine:

- (a) to or towards the maintenance, education, advancement, support or benefit of the Beneficiary in such manner and on such terms and conditions as the Trustee

determines; or

- (b) to any other person who appears to the Trustee to be a trustee for the Beneficiary or Spouse, Child, parent or guardian or a person having custody of the Beneficiary for application on behalf of the Beneficiary,

and the receipt by the person to whom the Benefit is paid is a complete discharge of the Trustee for the payment in respect of the Beneficiary and the Trustee is not bound or concerned to see to the application of the Benefit so paid.

**34.8 Unclaimed Benefits**

The Trustee must give to the Regulator a statement of Unclaimed Benefits and pay any Unclaimed Benefits to the Regulator at such time and in such manner as required by the Relevant Law.

**34.9 Death of Member Prior to Benefit Payment**

Where a Member has become entitled to receive a Benefit as a Lump Sum and before payment has been made by the Trustee, the Member dies, the Trustee may pay that Benefit in accordance with the provisions of clause 33.

**34.10 Limitation on Benefit Payments**

Notwithstanding any other provision of this Deed the Trustee must not pay out any Benefits to Members, Dependants or Beneficiaries where such payment would cause the Fund to breach the Relevant Law.

**35 PAYMENT OF TAXATION AND LEVIES**

**35.1 Tax on Contributions and Shortfall Components**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member. Where such Taxation has been deducted from a Contribution or Shortfall Component a reference to the crediting of the Contribution or Shortfall Component to an Accumulation Account means the crediting of the net Contribution or Shortfall Component after the deduction of such Taxation.

**35.2 Surcharge**

The Trustee may make provision for and may deduct any surcharge or other amount of whatever description levied on the Fund, pursuant to the Superannuation Contributions Tax (Assessment and Collection) Act 1997 and related legislation (including any applicable provisional or advance payments required under that legislation).

**35.3 Tax on Income**

The Trustee may make provision for and may deduct any Taxation payable in relation to the taxable income of the Fund not otherwise deducted under this clause 35 from the Income Account or the Accounts of Members.

**35.4 Tax on Benefits**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, may deduct from any Benefit payable to any Member or Beneficiary under this Deed any Taxation required to be deducted (or such Taxation as the Trustee considers is required to be deducted) from it.

**35.5 Payment to Relevant Authority**

The Trustee must pay all Taxation which is not being transferred with the agreement of the Trustee to an Insurer or otherwise transferred as provided under the Tax Act, and any Levy which is due and payable by the Fund, to the relevant authorities within the required time for payment.

**36 POLICIES OF ASSURANCE****36.1 Trustee to Effect Policy**

The Trustee may effect separate Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another. The Trustee is not responsible or liable to a Member, a Member's legal personal representative or the Dependants of a Member should the Trustee determine not to exercise the power to effect such Policy or Policies.

**36.2 Trustee Required to Effect Policy**

Notwithstanding anything in clause 36.1, where:

- (a) the Trustee has informed a Member that a Policy of a specified type (including the quantum of cover) will be effected in respect of the Member, the Trustee must effect such Policy unless the Member requests the Trustee in writing not to effect such Policy; or
- (b) a Member requests the Trustee in writing to effect a Policy of a specified type (including the quantum of cover) in respect of the Member, and the Trustee agrees to effect such Policy on the basis that to do so is in the best interests of the Member or the Dependants of the Member, the Trustee must effect such Policy unless the Member by written notice to the Trustee withdraws, cancels or alters the Member's original request,

provided always that the Trustee is able to obtain such Policy or Policies in respect of the Member.

**36.3 Premiums for Policy**

The premiums for any Policy effected may be debited to the Income Account or directly to the Accumulation Account of the Member in respect of whom the Policy is effected or alternatively in such proportions among Members as the Trustee considers to be equitable.

**36.4 Limitations on Policy**

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member or Beneficiary then notwithstanding the Benefits which may be payable under this Deed in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member or Beneficiary as it may determine.

**36.5 Endowment or Whole of Life Policy**

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life Policy, then the Member's Benefit Entitlement means, in relation to those Contributions and any net earnings which would but for this clause 36.5 be applicable to them, the surrender value of such endowment or whole of life Policy.

**37 VARIATION OF TRUST DEED**

The provisions of this Deed including this clause 37 may be added to, amended, altered, modified, rescinded or varied (in this clause referred to as the **Variation**) from time to time by the Trustee which Variation may be prospective or retrospective and must be effected on the following basis:

**37.1 Resolution or Deed**

The Variation must be:

- (a) by oral declaration or written resolution of the Trustee; or
- (b) by Deed executed by the Trustee.

**37.2 Notice**

On any Variation being effected, the Trustee must, if so required by the Relevant Law, advise the Members and Beneficiaries in writing of the nature and purpose of the Variation and the effect on their entitlements or rights in accordance with and in the manner and time required by the Relevant Law.

**37.3 Limitation on Variation**

No Variation may have the effect of:

- (a) reducing or adversely affecting the rights or claims of a Member to accrued entitlements from the Fund which have arisen prior to the Variation being effected; or
- (b) reducing the amount of an entitlement other than an entitlement referred to in clause 37.3(a) that is or may become payable in relation to a period before the date of the Variation, unless:
  - (i) the reduction is required to enable the Fund to comply with the Relevant Law;
  - (ii) the Member so affected consents in writing to the reduction; or
  - (iii) the Regulator consents in writing to the reduction.

**37.4 Further limitation on Variation**

No Variation to this Deed may:

- (a) have the effect of providing that the sole or primary purpose of the Fund is other than the provision of old-age pensions within the meaning of the Relevant Law, unless the Trustee is a Constitutional Corporation or the Relevant Law otherwise permits; or
- (b) permit a person or body other than a Constitutional Corporation to be appointed as Trustee, unless the Deed provides that the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Relevant Law or the Relevant Law otherwise permits.

**38 WINDING UP OF FUND****38.1 Election to Terminate**

The Trustee may elect to wind up the Fund at a certain date (in this clause referred to as the **Termination Date**) in the following circumstances:

- (a) if no Members remain in the Fund;
- (b) on the written request of all of the Members of the Fund;

- (c) if the Trustee determines for any reason that the Fund should be wound up; or
- (d) if required by the Regulator.

### **38.2 Procedure on Winding Up**

Where the Fund is to be wound up the Trustee must:

- (a) give written notice to each Member that the Fund is to terminate on the Termination Date;
- (b) value the assets of the Fund and determine the assets of the Fund available to pay Benefits to Members, former Members and Beneficiaries in accordance with clause 38.3, or to transfer Benefit Entitlements or to roll-over Benefits to an Approved Benefit Arrangement in respect of the relevant Member, former Member or Beneficiary;
- (c) determine the amount standing to the credit of a Reserve Account and credit such amount to such account held for Members or Beneficiaries as the Trustee considers appropriate;
- (d) pay all Taxation payments, expenses or charges which are then outstanding or are incurred in connection with the winding up of the Fund;
- (e) arrange to pay or transfer Benefits or Benefit Entitlements to or in respect of Members, former Members and Beneficiaries in accordance with clause 38.3 or 23; and
- (f) attend to all such administrative and regulatory matters as arise in connection with the winding up of the Fund, including the lodgement of returns and notices with Regulators.

### **38.3 Exhaustion of Fund**

The Trustee must pay the following Benefits in the following order to the extent that the assets of the Fund permit:

- (a) Benefits to which Members, former Members, Beneficiaries or their Dependants are entitled at the Termination Date; and
- (b) additional Benefits to Members, former Members, Beneficiaries and their Dependants as the Trustee in its absolute discretion may determine.

## **39 MEMBERSHIP CLASSIFICATION**

### **39.1 Classes of Membership**

The Trustee may in its discretion create such membership classes with such rights, entitlements, conditions of eligibility and Benefits as the Trustee may decide.

### **39.2 Reclassification**

The Trustee may in its absolute discretion classify a Member as being a Member of a specified class or reclassify a Member as being a member of another class, at any time provided that a Member's accrued Benefits must not be adversely affected by any such reclassification.

### **39.3 Transfer of Accumulation Account**

On the reclassification of a Member as a Member of another class the Trustee may, with the

consent of the Member, transfer all or any of the Member's Accumulation Accounts to the new membership class subject to the proviso contained in clause 39.2.

**40 GUARDIAN**

**40.1 Appointment of Guardian**

The Members may by instrument in writing appoint a person, persons or body to act as Guardian of the Fund, or remove or replace a Guardian. The Members must, in such instrument of appointment, specify what powers, rights, decisions, discretions, appointments and other authorisations granted to or conferred on the Trustee by, under or for the purposes of this Deed (**Relevant Powers**) are not to be exercised, made, done or performed by or on behalf the Trustee without the prior consent in writing of the Guardian.

**40.2 Consent of Guardian**

While there is a Guardian, the Trustee must not, subject to the Relevant Law, exercise, make, do or perform a Relevant Power without the prior consent in writing of the Guardian.

**DIVISION B - DETERMINATION AND PAYMENT OF BENEFITS**

**41 TREATMENT OF PRESERVED BENEFITS**

Notwithstanding any other provision of this Deed which may be construed to the contrary, any Preserved Payment Benefits held by the Trustee which under the Relevant Law are not permitted to be paid out to the Member may, at the discretion of the Trustee, be dealt with in accordance with clause 23, or retained in the Fund subject to clauses 42 and 44.

**42 PAYMENT OF PRESERVED AMOUNTS**

Notwithstanding any other provision of this Deed which may be construed to the contrary, the Trustee may determine to pay a Member or Dependant of a Member any Benefit which is a Preserved Payment Benefit on the Member retiring from Gainful Employment at or after attaining the Preservation Age in respect of the Member, in the event of Permanent Incapacity, the death of the Member or in other circumstances permitted by the Relevant Law.

**43 PAYMENT OF NON-PRESERVED AMOUNTS**

Notwithstanding any other provision of this Deed which may be construed to the contrary:

(a) **Member Election**

a Member may elect at any time to withdraw the whole or any part of their Non-Preserved Amount by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time;

(b) **Minimum Payment**

the minimum Non-Preserved Amount which may be withdrawn by a Member under clause 43(a) must be determined by the Trustee and notified to Members.

**44 COMPULSORY PAYMENT OF BENEFITS**

Notwithstanding any other provision of this Deed which may be construed to the contrary, the Benefit Entitlement of a Member must be cashed, or commence to be cashed within the meaning of the Relevant Law, as soon as practicable after the date on which the Relevant Law requires such Benefit Entitlement to be cashed or to be commenced to be cashed.



**45 BENEFIT AUGMENTATION**

Prior to payment of a Benefit, the Trustee may determine to pay some part of the Reserve Account under clause 12.5(c)(viii) to the Member's Accumulation Account for purposes of the payment of a Benefit.

**46 DEALING WITH BENEFITS****46.1 Payment of Benefits**

Where a Member or Beneficiary is eligible to receive payment of a Benefit under clauses 47, 48.1, 49, 50, 51 or 53 the Benefit may be paid as:

- (a) one or more lump sums;
- (b) an Income Stream or Income Streams;
- (c) a combination of lump sum and Income Stream,

unless the Benefit must be provided in some other manner under the Relevant Law.

**46.2 Retention of Benefits**

Where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable under this Division B in the Fund until:

- (a) **Request**  
the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;
- (b) **Death**  
the Member dies, in which case it must be paid in accordance with clause 33;
- (c) **Payment Otherwise Required**  
the payment of the Benefit is required in accordance with the provisions of this Deed or the Relevant Law; or
- (d) **Discretion**  
the Trustee elects in its absolute discretion to pay the Benefit to the Member or Beneficiary,

whichever first occurs, and the amount then payable is the Benefit standing to the credit of that Member's or Beneficiary's Accumulation Account as at the date of payment provided however that all Benefits must be paid at such time and in such manner as required by the Relevant Law.

**47 RETIREMENT**

Where a Member:

- (a) who is a self-employed person Retires from Gainful Employment at or after Normal Retirement Age;
- (b) Retires from Employment with an Employer at or after Normal Retirement Age; or
- (c) satisfies the Relevant Law for the payment of Benefits at or after Normal Retirement Age,

and the Member requests that a Benefit be paid, then such Member must be paid the amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made, or such part of such amount as the Member requests.

**48 INCAPACITY****48.1 Permanent Incapacity**

In the event that a Member suffers, in the opinion of the Trustee, Permanent Incapacity and requests that a Benefit be paid, then such Member must be paid by the Trustee a Benefit equal to the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made, or such part of such amount as the Member requests.

**48.2 Temporary Incapacity**

- (a) In the event that a Member suffers, in the opinion of the Trustee, Temporary Incapacity and requests that a Benefit be paid under this clause 48.2, then such Member may be paid by the Trustee a non-commutable income stream equal to:
- (i) in the case of a Member in respect of whom the Trustee receives an income Benefit under a Policy effected in relation to Temporary Incapacity, the amount payable to the Trustee as a result of the Temporary Incapacity of the Member under the Policy; and
  - (ii) in respect of any other Member, an income Benefit determined by the Trustee provided that the total income Benefit received by the Member may not reduce the Member's Benefit Entitlement and any payment of an income Benefit under this clause 48.2 is subject to the limitations contained in the Relevant Law.
- (b) A Member ceases to suffer Temporary Incapacity in the event that the Member:
- (i) ceases to satisfy the definition of Temporary Incapacity;
  - (ii) attains Normal Retirement Age; or
  - (iii) becomes entitled to another Benefit payable under this Deed.
- (c) Any income Benefit under this clause 48.2 must:
- (i) in the case of a Benefit payable under a Policy, be paid in accordance with, and will cease in the circumstances set out in the Policy; and
  - (ii) in any other case, be paid in the manner and in circumstances determined by the Trustee for this purpose from time to time,
- and comply with the requirements of the Relevant Law.

**49 EARLY RETIREMENT FROM EMPLOYMENT**

In the event that a Member for any reason other than Permanent Incapacity:

- (a) who is a self-employed person Retires from Gainful Employment prior to Normal Retirement Age and the Member has attained the Member's Preservation Age; or
- (b) Retires from Employment with an Employer prior to Normal Retirement Age and the Member has attained the Member's Preservation Age; or
- (c) Retires from an arrangement under which the Member was in Gainful Employment having attained the age of 60 years or such other age prescribed for this purpose under the Relevant Law,

and the Member requests that a Benefit be paid, then the Trustee must pay to the Member the full amount standing to the credit of the Member's Accumulation Account as at the date of payment, or such part of such amount as the Member requests.

**50 OTHER TERMINATION OF EMPLOYMENT**

In the event that a Member terminates Gainful Employment with an Employer prior to the Member's Preservation Age in circumstances where no Benefit is payable under any other provision of this Division B, and the Member requests that a Benefit be paid, then the Trustee, may pay to the Member a Benefit drawn from the Member's Accumulation Account, subject to the Relevant Law, as the Trustee may in its discretion determine.

**51 PAYMENT ON DEATH****51.1 Benefits**

On the death of a Member the Trustee must pay the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made in accordance with the provisions of clause 33. The Trustee may in its discretion increase any lump sum Benefit paid on the death of the Member by payment of an Anti-Detriment Payment, but only to the extent that the Trustee is satisfied that:

- (a) it will be entitled to a tax deduction in respect of such Anti-Detriment Payment;
- (b) sufficient funds are available in a Reserve Account to make such Anti-Detriment Payment; and
- (c) such payment would not disadvantage any other Member or Beneficiary of the Fund.

**51.2 Interim Benefit Payment**

Where the Dependants or the Legal Personal Representative of a Member or Beneficiary are to receive from the Fund any Benefit the Trustee, instead of paying the Benefit as a single lump sum, may pay the Benefit in the form of one or more interim lump sum payments.

**52 PAYMENT ON TERMINAL MEDICAL CONDITION**

In the event that the Trustee is satisfied that a Member suffers a Terminal Medical Condition, and the Member requests that a Benefit be paid, then such Member must be paid the amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made.

**53 OTHER BENEFIT PAYMENT EVENTS**

Where:

- (a) the Trustee is satisfied that a Member is in severe financial hardship for the purposes of SIS; or
- (b) the Regulator has determined that an amount of a Member's Benefit Entitlement may be released on compassionate grounds; or
- (c) the Trustee is satisfied that the Member has met some other condition of release for the purposes of SIS,

the Trustee may pay such Member such part of the amount standing to the credit of the Member's Accumulation Account at the date on which payment is made as is permitted under SIS.

**EXECUTED** as a Deed on the date set out in Schedule A.

## SCHEDULE A

<b>DATE OF DEED:</b>	X 25 March 2010
<b>TRUSTEES:</b>	Andrew Domenic Tarca and Angela Maria Tarca
<b>NAME OF FUND:</b>	Tarca Family Superannuation Fund
<b>ESTABLISHMENT DATE OF THE FUND:</b>	20 August 2008
<b>PROPER LAW GOVERNING FUND:</b>	The Law of the State of South Australia
<b>PREVIOUS AMENDMENTS</b>	Nil

## SCHEDULE B

## Tarca Family Superannuation Fund

## APPLICATION FOR MEMBERSHIP

TO: THE TRUSTEES OF THE FUND

<b>AGREEMENT AND UNDERTAKING</b>
----------------------------------

I, the undersigned person, being eligible for membership, hereby apply for admission to membership of the Fund. I agree and undertake that:

- a. if I am an employee of any other Member, I am also a Relative of the other Member(s);
- b. I am not disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- c. I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time;
- d. I will, on request, make full disclosure in writing of any information required by the Trustee in respect of my medical condition or my membership of the Fund including any circumstance which may have the effect that:
  - i. I may become an employee of any other Member or Members where I will not also be a Relative of the other Member(s); or
  - ii. I may become disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- e. I understand the terms and conditions of the Trust Deed including my obligations as a Trustee and I agree to sign and deliver to the Australian Taxation Office such form or declaration in connection with my accepting the office of a Trustee or as a Director of the Trustee as may be required under the Relevant Law within such period as the Relevant Law requires;
- f. I understand the terms and conditions of Division B of the Deed concerning Benefits payable;
- g. understand that I am not legally obliged to provide by tax File Number (TFN) to the Trustee but if I do not provide my TFN, concessional contributions will be taxed at the highest marginal tax rate plus the Medicare levy and the Fund will not be able to accept non-concessional contributions.
- h. My TFN is \_\_\_\_\_
- i. I agree to act as a Trustee for the Fund or to act as a Director of the trustee.

<b>Name:</b>	
<b>Address:</b>	
<b>Date of Birth:</b>	

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date (Please ensure that you date this part of the form)

## SCHEDULE C

## DEATH BENEFIT NOTICES

Please tick the relevant box:-

I wish to give a **NON-BINDING** DEATH BENEFIT NOTICE.

To give your **NON-BINDING** DEATH BENEFIT NOTICE, please tick this box and complete **Section 1** below.

- OR -

I wish to give a **BINDING** DEATH BENEFIT NOTICE.

To give your **BINDING** DEATH BENEFIT NOTICE, please tick this box and complete **Section 2** below ensuring that your signature is witnessed as set out below.

**DO NOT COMPLETE BOTH BOXES**

**1. NON-BINDING DEATH BENEFIT NOTICE**

Complete this part of the form (section 1 only) if you wish to nominate who should receive your superannuation benefits on your death, but you do not want that nomination to be binding on the trustee.

I nominate the undermentioned persons as the persons who I wish to receive my superannuation benefits on my death \*:

Surname(s)	Given Name(s)	Relationship	% of Total Benefit
		<b>TOTAL</b>	<b>100%</b>

If any of the persons nominated above predecease me, I wish that the part of my death benefit that would otherwise have been payable to the deceased person noted above, be paid to the person or persons nominated below:

Name of Dependant initially nominated above	Proportion of Total Benefit Nominated	Name of Person taking the place of the deceased Dependant	Relationship
	%		
	%		
	%		
	%		
	%		
Signature of Member		Date (Please ensure that you date this part of the form)	

\*The person or persons must be either a Dependant or your legal personal representative or a combination of both. If you wish to nominate your legal personal representative, please write the words "legal personal representative" or "estate". You may state your wish as to who should receive your superannuation benefits on your death if a nominated person predeceases you or is no longer your Dependant at the time of your death.

**2. BINDING DEATH BENEFIT NOTICE**

Complete this part of the form (section 2 only) if you wish to nominate who should receive your superannuation benefits on your death, and you want that nomination to be binding on the trustee.

I require the trustee to pay, upon my death, benefits to the person or persons\*, and in the proportions, specified below:

Surname(s)	Given Name(s)	Relationship	% of Total Benefit
		<b>TOTAL</b>	<b>100%</b>

If any of the persons nominated above predecease me, I require the trustee to pay, upon my death, the part of my death benefit that would otherwise have been payable to the deceased person noted above, to the person or persons nominated below.

Name of Dependant initially nominated above	Proportion of Total Benefit Nominated	Name of Person taking the place of the deceased Dependant	Relationship
	%		
	%		
	%		
	%		
	%		
Signature of Member		_____/_____/_____ Date (Please ensure that you date this part of the form)	

\*The person or persons must be either a Dependant or your legal personal representative or a combination of both. If you wish to nominate your legal personal representative, please write the words "legal personal representative" or "estate". You may state your requirement as to who will receive your superannuation benefits on your death if a nominated person predeceases you or is no longer your Dependant at the time of your death.



**Witnesses to Binding Death Benefit Notice**

***You must have this form witnessed as set out below if you have completed section 2 above. A witness is not required if you have completed section 1.***

We declare that the Member signed and dated **section 2** of this form in our presence and that:

- (a) we are each 18 years of age or over; and
- (b) we are neither the Dependants specified above nor the legal personal representatives of the Member

\_\_\_\_\_  
Signature of Witness

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date (Please ensure that you date this part of the form)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date (Please ensure that you date this part of the form)