

Semczyszyn Beard Superannuation Fund

SUPERANNUATION TRUST DEED

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THIS TRUST DEED is made on the Date of this Deed specified in the Schedule.

PARTIES:

1. The person named as the Founder in the Schedule ("the Founder")
2. The person named as the Trustee in the Schedule ("the Trustee")

RECITALS:

- A. This Deed contains the governing rules of an indefinitely continuing superannuation fund ("the Fund") known by the name specified in the Schedule.
- B. This Deed requires that:
 - (i) the Fund have the sole or primary purpose of providing Old-Age Pensions and may also have the ancillary purpose of providing other Benefits described in this Deed; **AND, OR IN THE ALTERNATIVE,**
 - (ii) the Fund have a Corporate Trustee as the Trustee of the Fund.
- C. The Founder has requested the Trustee to act as the Trustee of the Fund and the Trustee has consented to act as the Trustee of the Fund.
- D. This Deed reflects the intention of the Founder and the Trustee that the Fund operate as a complying regulated self managed superannuation fund within the meaning of the Act and comply with the Act in order that the Fund is eligible for concessional Taxation treatment.

THIS DEED WITNESSES:

1. **DEFINITIONS**

1.1 **Defined Terms in this Deed**

In this Deed, unless the context otherwise requires:

"Account" means any account established and maintained by the Trustee under this Deed for administering the Fund on behalf of the Members, and includes any Accumulation Account, Equalisation Account, Income Account, or Pension Account, as described in this Deed.

"Act" means:

- (a) Co-contribution Act;
- (b) Corporations Act;

- (i) are dated;
 - (ii) are sufficiently detailed and accurate to record the nature of business discussed, the decisions of the Trustee and the reasons for those decisions;
 - (iii) identify any documents that have been presented to the Trustee and considered by the Trustee before the making of any decision; and
 - (iv) record attendance, non-attendance and voting at meetings, particularly in relation to any decision which needs a voting requirement other than a simple majority.
- (c) The minutes of any meeting once signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting will be *prima facie* evidence of the matters stated in those minutes.
- (d) The Trustee must retain the minutes of meeting for at least the minimum period required by the Act.

9.10 Items for Consideration

Subject to clause 9.1, the Trustee must endeavour to ensure that meetings regularly consider, amongst other things and so far as relevant, the following:

- (a) that Individual Trustees or Directors of a Corporate Trustee are not, or have not become, disqualified persons as defined in the Act;
- (b) that the Fund assets are reconciled to the accrued liabilities of the Fund;
- (c) the investment performance of the Fund, including the performance of any service providers to the Fund;
- (d) any claim for Benefits;
- (e) any complaints or enquiries made by Members;
- (f) any conflicts of interest; and
- (g) that the Trustee and the Fund are complying with the Act.

10. TRUSTEE'S DISCRETION

10.1 No Requirement to Give Reasons

The Trustee is not bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any power or discretion by the Trustee.

- (b) This indemnity does not extend to any liability of the Trustee arising in circumstances described in clause 11.2.

11.4 Indemnity of Director

If a Director incurs a liability in acting as a Director of a Corporate Trustee in respect of conduct or circumstances for which the Trustee is or would be entitled to be indemnified out of the Fund, the Director must also be indemnified out of the Fund in respect of that liability.

11.5 Lien on Fund to Satisfy Indemnity

The Trustee may exercise a lien on and use any assets of the Fund for the purposes of satisfying the indemnity given to the Trustee provided that the existence or exercise of the lien does not contravene the Act.

12. COVENANTS BY TRUSTEE

The Trustee 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 interest of the Beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by the Trustee personally; or
 - (ii) that are money or assets, as the case may be, of 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:

14.2 Reports to Members

The Trustee must keep, and retain for as long as relevant and for at least the minimum period required by the Act, copies of reports that were given to all Members if the reports were given under the Act or under this Deed. The Trustee must, if requested, make those copies available for inspection by the Responsible Authority.

15. ADMISSION OF MEMBERS

15.1 Eligible Person to Apply

An Eligible Person may apply to the Trustee to become a Member of the Fund or the Trustee may invite an Eligible Person to become a Member of the Fund.

15.2 Application Form

An Eligible Person may apply for membership by completing a written application in the form that the Trustee determines. The application form may make provision for:

- (a) all information which is required by the Act to be provided by the Trustee to the applicant and to be provided by the applicant to the Trustee;
- (b) the applicant providing (if the applicant chooses to do so) the Tax File Number of the applicant and an acknowledgement by the Trustee and/or Employer; and
- (c) the applicant providing the nomination of a Nominated Beneficiary.

15.3 Acceptance of Membership Application

If the Trustee accepts an application for membership, the applicant becomes a Member of the Fund on a date determined by the Trustee or, if the Trustee does not make a determination, on the date the application for membership is accepted by the Trustee.

15.4 Deemed Acceptance of Application

Notwithstanding clause 15.2, even if a completed written application for membership is not provided by an applicant, the payment of a Contribution by or on behalf of an applicant and the acceptance by the Trustee of that Contribution will be deemed to be acceptance of that applicant as a Member on the date that the Contribution is accepted by the Trustee.

- (b) the details of all agenda items, including the proposed resolutions to be considered at the meeting; and
- (c) that a proxy may be appointed to vote on behalf of the Member at the meeting provided that the Member lodges the form of proxy with the Trustee not later than 24 hours before the scheduled starting time of the meeting.

The notice must be accompanied by a form of proxy approved by the Trustee.

16.4 Service of Notice

The Trustee must cause the notice of meeting to be served on each Member at least ten days before the date of the meeting. Service may be effected personally or by prepaid ordinary mail, and if by mail, notice will be deemed to have been given 3 days after the date of posting.

16.5 Chairperson

The Members may at the commencement of the meeting appoint a Chairperson of the meeting.

16.6 Voting Entitlement

Each Member is entitled to one vote. The Chairperson does not have a casting vote in addition to the vote of the Chairperson as a Member.

16.7 Trustee to Oversee Meeting

The Trustee may oversee the conduct of the meeting of Members and must keep minutes of the meeting of Members.

17. CESSATION OF MEMBERSHIP

17.1 Triggering Events

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

- (a) the date on which payment of all the Member's Benefits is made or dealt with by the Trustee to or on behalf of the Member;
- (b) the date of death of the Member;
- (c) the date that the Trustee reasonably determines in accordance with any relevant requirement of the Act.

18.5 **Members Updated Information to Trustee**

Members may at any time give the Trustee updated information about their details such as address, marital status, status of Gainful Employment, Dependants and/or Nominated Beneficiaries.

19. **DISCLOSURE AND REPORTING TO MEMBERS**

19.1 **General Requirement**

The Trustee must provide each Member with information in writing in relation to the main features, benefits, risks and conduct of the Fund, the financial condition and investment performance of the Fund, the Benefit of the Member, Contributions to the Fund, and any other matters that the Trustee determines is required by the Act.

19.2 **Specific Requirements**

If required by the Act, the information that the Trustee is to provide may include:

(a) **New Members**

information to a person on becoming a Member;

(b) **For each Financial Year**

information to each Member in respect of each Financial Year of their membership;

(c) **Significant Events and Material Changes**

information to each Member in respect of any significant event and material changes in relation to the Fund;

(d) **Information on Request**

information to a Beneficiary (including a Member) on request by the Beneficiary if the Beneficiary reasonably requires the information for the purposes of:

- (i) understanding any Benefit that the Beneficiary may have, has or used to have;
- (ii) understanding the main features of the Fund;
- (iii) making an informed judgment about the management and financial condition of the Fund;

20. GENERAL POWERS OF THE TRUSTEE

20.1 Trustee has Complete Management and Control

The Trustee has complete management and control of all matters concerning the Fund, subject to this Deed and the requirements of the Act.

20.2 Trustee May do all Acts in Exercise of Powers/Obligations

The Trustee may do all acts and things which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise and performance of the Trustee's discretions, powers and obligations under the Deed.

20.3 Powers Additional to Powers Given under Act

The Trustee's powers and discretions under this Deed are additional to, and not in substitution for, the powers and discretions exercisable by the Trustee under the Act.

21. SPECIFIC MANAGEMENT POWERS OF THE TRUSTEE

Subject to clause 23, the Trustee has the following powers:

21.1 Appoint and Pay Managers and Others

To appoint remove or suspend custodians, investment managers, administrators, clerks, agents, representatives, nominees and other servants and delegates, whether they be appointed for permanent, temporary or special services, and to determine their powers and duties and fix and pay from the Fund their salaries, emoluments and charges;

21.2 Legal Proceedings

To institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund, the Members or the Deed;

21.3 Compound Debts

To compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;

21.4 Arbitration

To refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator;

as the Trustee may consider desirable and to accept surrenders of or otherwise determine such leases or sub-leases;

21.13 Sell Property

To sell or otherwise dispose of any property forming part of the Fund at such price and upon such terms and conditions and in such manner as the Trustee may consider desirable;

21.14 Undertaking and Contracts

To give undertakings and enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit;

21.15 Insurance and Premiums

To effect Policies of Insurance to provide for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender vary or assign or otherwise deal with any Policy of Insurance as the Trustee thinks fit;

21.16 Proxies and Powers of Attorney

To give proxies and powers of attorney (with or without powers of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any property comprising part of the Fund;

21.17 Purchase Annuity

To purchase an Annuity to provide all or a part of the Pension payable in respect of a Member;

21.18 Insurance of Property

To insure and keep insured any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund;

21.19 Insurance of Trustee and Directors

To insure and keep insured any liability of the Trustee or any Directors of a Corporate Trustee or the liability of the Fund to indemnify or reimburse the Trustee or Directors, as the case may be.

22. INVESTMENT OF THE FUND

22.1 General Investment Powers of the Trustee

Subject to clause 23, the Trustee may in the name of the Trustee or in the name of any nominee selected by the Trustee invest the whole or any part of the Fund

22.4 The Trustee may have Interest in Investments

- (a) The Trustee may make or vary any of the investments authorised under this Deed even if the Trustee (including an Individual Trustee or Director of a Corporate Trustee) may directly or indirectly have an interest in or may benefit from the investment.
- (b) The Trustee and any Directors must disclose details of their interest in any investment in any manner that is required by the Act.

22.5 Policies of Insurance

- (a) The Trustee may obtain Policies of Insurance on behalf of a Member to secure the Benefit of a Member.
- (b) A Member may request the Trustee to obtain a Policy of Insurance and may specify the type of Policy of Insurance to be obtained. The Trustee has no responsibility to the Member or the Dependents of the Member to obtain that Policy of Insurance.
- (c) The Trustee may debit the premiums for any Policy of Insurance to:
 - (i) the Income Account; or
 - (ii) the Accumulation Account of the Member for whom the Policy of Insurance is obtained.

22.6 Prudent Investment Rules

Subject to clause 23, and without limiting the matters that the Trustee may take into account when exercising a power of investment, the Trustee must, so far as they are appropriate to the circumstances of the Fund, have regard to:

- (a) the purposes of the Fund and the needs and circumstances of the Beneficiaries;
- (b) the desirability of diversifying the Fund's investments;
- (c) the nature of and risk associated with the existing investments and property of the Fund;
- (d) the need to maintain the real value of the capital or income of the Fund;
- (e) the risk capital or income loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return and timing of income return;

- (a) all parties to the relevant transaction are dealing at arm's length in respect of the transaction; or
- (b) if the parties are not dealing with each other at arm's length, the terms and conditions of the transaction are no more favourable than those which it would be reasonable to expect would apply if the parties were dealing with each other at arm's length.

23.6 **Statement of Investment Strategy**

The Trustee must if required by the Act formulate and prepare an Investment Strategy which sets out the investment objectives of the Fund and the policy to achieve those objectives and incorporates any other matters which are necessary for the Trustee to comply with the Act.

23.7 **Member Investment Choice**

- (a) The Trustee may choose in the Trustee's absolute discretion to adopt and offer to Members (or a specific class of Members) a choice of two or more individual Investment Strategies from which a Member (or a class of Members) may choose one Investment Strategy or a combination of individual Investment Strategies ("Member Investment Choice").
- (b) The Trustee must give directions to the Members (or each Member of the class of Members):
 - (i) identifying the investment objectives of each of the Investment Strategies;
 - (ii) providing all information which the Trustee reasonably believes a person would reasonably need for the purpose of understanding the objectives, effect of, and any risk involved in, each of those Investment Strategies, as if each Investment Strategy offered was the Investment Strategy for the Fund as a whole;
 - (iii) providing full information of the range of directions that can be given by the Trustee and the circumstances in which they can be changed;
 - (iv) identifying the particular Investment Strategy the Trustee will adopt for a Member (or each Member of a class of Members) if no choice is made by the Member (or each Member of the class of Members), unless it is a condition of membership that the Member must choose a particular Investment Strategy or combination of Investment Strategies.
- (c) If determining two or more individual Investment Strategies to offer as a choice to Members, the Trustee must give proper consideration to:

Account by acquiring or entering into any investment separately and on behalf of the Member, provided the investment satisfies the Investment Strategy of the Fund.

24.2 Trustee to Record and Account Separately

The Trustee must record any investments attributable to the Member and all revenue and expenses in respect of the investment must be credited or debited as the case may be directly to the relevant Member's Accumulation Account.

24.3 Variation to the Investment

The Trustee may accept or reject a request from a Member to vary any specific investment of that Member.

25. VALUATION OF FUND

Following each Balance Date and any other date which the Trustee considers appropriate or is required by the Act, the Trustee must obtain a valuation of the Fund. The valuation must be reflected in the accounts of the Fund.

26. DELEGATION BY TRUSTEE

26.1 Trustee's Right to Delegate

Subject to clause 26.3, the Trustee may delegate any power, discretion or obligation exercisable by the Trustee (including any power or obligation which the Trustee has a duty to exercise and the power of delegation) to any person ("the Delegate") in a manner and on terms that the Trustee thinks fit.

26.2 Variation or Revocation to Delegation

The Trustee may vary or revoke any delegation and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.

26.3 Delegation Subject to Act

The Trustee must not make any delegation or allow any delegation to remain where the delegation contravenes the Act.

26.4 Scope of Delegation

The Delegate may only perform those duties and only has those powers that the Trustee expressly delegates to the Delegate.

- (ii) to keep the investment portfolio under review and to confer with and advise the Trustee regularly;
- (iii) to exercise all due diligence and care;
- (iv) to have appropriately qualified staff in charge at all times;
- (v) to ensure assets are vested in the Trustee (or a Custodian, if applicable) as soon as possible; and
- (vi) to provide upon request information to the Auditor of the Fund.

27.5 Qualified Advisors

The Trustee may from time to time appoint any Qualified Advisors to give advice that the Trustee considers desirable for the proper management and administration of the Fund.

27.6 Revocation of Appointment

The Trustee may revoke and remove from office any person appointed to any position under this clause.

28. REMUNERATION OF TRUSTEE AND REIMBURSEMENT FOR ADMINISTRATION EXPENSES

28.1 No Right to Charge Fees

For as long as the Fund is a Self Managed Fund, the Trustee is not entitled to charge professional fees or other remuneration in acting as the Trustee of the Fund or in connection with the management and administration of the Fund.

28.2 Indemnity and Reimbursement

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

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with the investments of the Fund;
- (b) all fees, wages and expenses of any Auditor, Actuary, Qualified Advisor, Investment Manager or Custodian from time to time engaged by the Trustee under this Deed;
- (c) all Taxation paid or payable by the Trustee in connection with the Fund and any Member on any account whatsoever;

30.3 Retention

The Trustee must retain the accounting statements for the minimum period required by the Act after the end of the Financial Year to which the accounting statements relate.

31. AUDIT OF THE FUND

31.1 Audit to be Conducted each Financial Year

If required by the Act, the accounting statements of the Fund prepared in respect of each Financial Year must be audited by an Auditor appointed by the Trustee.

31.2 Auditor to be Given Access to Documents/Information

The Trustee must give the Auditor access to any accounting records and accounting statements and other documents and information connected with the Fund as requested by the Auditor to enable the Auditor to complete the audit.

32. ANNUAL RETURNS ETC TO RESPONSIBLE AUTHORITY

The Trustee must in respect of each Financial Year and within the time required by the Act give to the Responsible Authority:

32.1 Annual Return

an annual return in a form prescribed by the Act;

32.2 Trustee Certificate

a trustee certificate in a form prescribed by the Act;

32.3 Audit Certificate

the audit certificate given to the Trustee by the Auditor; and

32.4 Other Documents or Information

any other documents or information which may be required by the Act, or are requested by the Responsible Authority, to be given to the Responsible Authority.

33. COMPLAINTS PROCEDURE

33.1 If Required by the Act

The Trustee must, if required by the Act, establish and maintain arrangements for complaints and enquiries by Members.

- (d) the investment return (if positive) of the Member's Benefit as determined by the Trustee and transferred from the Income Account;
- (e) any amounts transferred from a Pension Account in respect of a Member; and
- (f) any other amounts as the Trustee may from time to time determine.

35.3 Debits to Accumulation Accounts

The following amounts may be debited to the appropriate Accumulation Account of a Member:

- (a) any Benefit paid to a Member or a Beneficiary in respect of the Member;
- (b) any amount transferred or rolled over from the Fund in respect of the Member to another Approved Superannuation Entity;
- (c) the investment return (if negative) of the Member's Benefit as determined by the Trustee;
- (d) the costs of any Policy of Insurance or Annuity obtained in respect of the Member;
- (e) the proportion of any amount payable as Taxation in respect of Contributions to the Fund or income of the Fund credited to the Member's Accumulation Account or arising as a result of a Rollover Payment to or from another Approved Superannuation Entity as the Trustee may determine;
- (f) the proportion of any amount representing the reimbursement to the Trustee of costs, charges, or expenses incurred by the Trustee pursuant to this Deed as the Trustee may determine;
- (g) any amounts representing the payment by or reimbursement to, the Trustee for any surcharge payable pursuant to the Surcharge Acts in respect of a Member;
- (h) any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;
- (i) any amount transferred from an Accumulation Account to a Pension Account in respect of a Member; and
- (j) any other amounts as the Trustee may from time to time determine.

- (g) any other amount as the Trustee may from time to time determine.

37. **EQUALISATION ACCOUNT**

37.1 **Establishment**

The Trustee may establish and maintain an Equalisation Account as the Trustee sees fit.

37.2 **Credits**

Subject to the requirements of the Act, the Trustee may credit the Equalisation Account with:

- (a) an amount transferred from the Income Account; or
- (b) any Benefit forfeited pursuant to clause 58; or
- (c) any reserves or any other amount which the Trustee so determines in the Trustee's discretion.

37.3 **Investment Return on Equalisation Account**

Any amount held in the Equalisation Account does not form part of any Accumulation Account or Pension Account and any investment return (positive or negative) derived by the Fund on the Equalisation Account shall be credited or debited to the Equalisation Account from the Income Account.

37.4 **Purpose and Use includes Reserves**

- (a) The Equalisation Account may be used by the Trustee for the purpose of:
 - (i) stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy; or
 - (ii) for dealing with forfeited Benefits; or
 - (iii) for such other purposes that are not prohibited by this Deed or the Act as the Trustee may determine in its discretion.
- (b) The Trustee may create and operate separate Equalisation Accounts dealing with:
 - (i) investment reserves;
 - (ii) contribution reserves;
 - (iii) miscellaneous reserves;
 - (iv) pension reserves; or

40. **RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER**

In the event that an Employer is reconstructed or merges or amalgamates with another Employer, the transfer of service by a Member as an Employee of the former Employer to the service of a new Employer as a result of the reconstruction, merger or amalgamation will be deemed to be a continuation of service by that Member for the purposes of that Member's entitlement to receive any Benefit from the Fund.

41. **INSOLVENCY OF EMPLOYER**

If a receiver, receiver and manager, official manager, liquidator, voluntary administrator or any other form of insolvency administrator ("the Administrator") is appointed to, or assumes control over all or part of the assets of an Employer, then:

- (a) notwithstanding anything express or implied to the contrary in this Deed or in the instrument under which the Administrator has been appointed, all authorities, powers and discretions which are by this Deed vested in or exercisable by the Employer will, for the duration of the appointment of the Administrator, be vested in and exercisable by the Trustee in the Trustee's discretion on behalf of that Employer and not by the Administrator; and
- (b) the Employer's interest in the Fund will be determined and dealt with by the Trustee in a manner that the Trustee considers equitable for the benefit for the Members of the Fund.

42. **MEMBER CONTRIBUTIONS**

The Trustee may accept any Member Contribution as long as the Contribution is permitted by the Act.

43. **EMPLOYER CONTRIBUTIONS**

43.1 **Employer may Contribute**

The Trustee may accept any Employer Contribution in respect of a Member as long as the Contribution is permitted by the Act.

43.2 **Contributions Pursuant to Agreement with Trustee**

If an Employer contributes to the Fund in respect of a Member under any agreement with the Trustee under which the Employer agrees, or is required, to pay Contributions to the Fund, the Employer must separately specify to the Trustee the amount of those Contributions under the Agreement and the amount of Contributions (if any) made pursuant to clause 43.1.

46. **CONTRIBUTION SPLITTING**

After the end of each Financial Year, the Trustee may allow a Member to request the Trustee to split the Contributions made in respect of that Member in the previous year, with the split amount transferred to the benefit of the Member's Spouse, as long as the contribution split is made in a manner and form that is permitted by the Act.

47. **FUND TO PROVIDE BENEFITS**

The Trustee must ensure that the Fund is maintained solely for the purpose of providing the Benefits described in this Deed.

48. **RETIREMENT BENEFITS**

48.1 **Entitlement**

A Member is entitled to receive from the Fund a Retirement Benefit when the Member:

- (a) ceases to be Gainfully Employed on or after reaching Normal Retirement Age; or
- (b) reaches the age of 65 years; or
- (c) satisfies any relevant requirements of the Act for the payment of a Benefit upon retirement notwithstanding that the Member may otherwise continue in Gainful Employment.

48.2 **Amount**

The amount of the Retirement Benefit is the balance of the Member's Accumulation Account as advised to the Member by the Trustee.

48.3 **Manner of Payment - Lump Sum or Pension**

The Member may elect to receive the Retirement Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as any one or more of those forms. If the Member does not make the election, then the Benefit will be paid as a Pension.

49. **EARLY RESIGNATION (TERMINATION OF EMPLOYMENT) BENEFITS**

49.1 **Entitlement**

A Member is entitled to receive from the Fund an Early Resignation Benefit when the Member ceases to be in Gainful Employment with an Employer (who has made Contributions to the Fund in relation to that Member) before the Member's Normal Retirement Age.

50.4 Binding Beneficiary Nomination

- (a) The Trustee must give to any Member who wishes to make a binding beneficiary nomination the information that the Trustee reasonably believes that Member reasonably needs for the purpose of understanding the Member's rights to make a binding beneficiary nomination in accordance with the Act.
- (b) The Trustee must allow a Member to make a binding beneficiary nomination by giving to the Trustee a notice in writing which requires that any Death Benefit payable on or after the Member's death is paid to the person or persons referred to in the notice as the Member's Nominated Beneficiary **PROVIDED THAT:**
 - (i) the Nominated Beneficiary is the legal personal representative or a Dependant of the Member; and
 - (ii) the form of the notice, and the manner in which it is completed by the Member and given to the Trustee satisfies the relevant requirements of the Act.
- (c) A Member who has given a notice of binding beneficiary nomination to the Trustee may amend or revoke the notice by giving to the Trustee a notice of amendment or revocation in accordance with the relevant requirements of the Act.
- (d) Unless sooner revoked by the Member, a notice of binding beneficiary nomination given to the Trustee ceases to have effect at the end of the period of 3 years after the day it was first signed, or last confirmed or amended, by the Member.
- (e) If an item of information given by a Member in a notice of binding beneficiary nomination is not sufficiently clear to allow the Trustee to pay the Death Benefit in accordance with the notice, the Trustee must seek from the Member a written statement to clarify the item as soon as practicable after the Trustee receives the notice.
- (f) Other than as required by sub-clause (e) or the relevant requirements of the Act, the Trustee is not responsible or liable to a Member or that Member's estate or any other person for any consequence arising from the Member's notice of binding beneficiary nomination being invalid or ineffective due to the notice:
 - (i) having ceased to have effect; or
 - (ii) having failed to comply with any relevant requirement of the Act.

51. TOTAL AND PERMANENT DISABILITY BENEFITS

51.1 Entitlement

A Member is entitled to receive from the Fund a Permanent Disability Benefit if the Trustee is of the opinion the Member has become Totally and Permanently Disabled.

51.2 Amount

The Permanent Disability Benefit is:

- (a) the balance of the Member's Accumulation Account at the date upon which payment is made; and
- (b) the proceeds of any Policy of Insurance effected on behalf of the Member under this Deed; and
- (c) provided that, subject to the requirements of the Act, prior to the Total and Permanent Disability of a Member, the Trustee and that Member may agree in writing that the Permanent Disability Benefit which becomes payable upon the Total and Permanent Disability of the Member is to be an amount other than the aggregate of the balance of the Member's Accumulation Account at the date upon which payment is made and the proceeds of any Policy of Insurance effected under this Deed on behalf of that Member ("the Other Amount"), and if so agreed, then the Permanent Disability Benefit payable by the Trustee upon the Total and Permanent Disability of that Member must be the Other Amount.

51.3 Manner of Payment - Lump Sum or Pension

- (a) The Member may elect to receive the Permanent Disability Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as one or more of those forms. If the Member does not make the election, then the Benefit will be paid as a Pension.
- (b) If a Member is incapable of making an election under this clause, the election may be made on behalf of the Member by the Member's legally appointed attorney or guardian.

52. TEMPORARY DISABILITY BENEFITS

52.1 Entitlement

A Member is entitled to receive from the Fund a Temporary Disability Benefit if the Trustee is of the opinion the Member has suffered temporary incapacity as defined in the Act.

54.2 Type of Agreed Pension and Pension Agreement

- (a) The Trustee and the Pensioner may agree to any type, manner or form of Pension being provided to the Pensioner that suits the needs of the Pensioner, subject to the requirements of this Deed and the Act.
- (b) If the Trustee and the Pensioner agree on a particular type of Pension to be provided to the Pensioner (the "Agreed Pension") they must if they consider it necessary or desirable to comply with the Act record that agreement between them in writing ("the Pension Agreement") specifying any particular rules and requirements governing the Agreed Pension (the "Agreed Pension Rules").
- (c) Any Pension Agreement made under this clause must be read and construed in conjunction with and will be deemed to form part of this Deed as between the Trustee and the Pensioner but does not otherwise constitute an amendment to this Deed.
- (d) If there is any inconsistency between any requirement of the Agreed Pension Rules and:
 - (i) any provision of this Deed - then the requirement of the Agreed Pension Rules prevails; or
 - (ii) any relevant requirement of the Act - then the requirement of the Act prevails;
 to the extent of that inconsistency.

54.3 Amount of Pension

The Trustee will determine the amount of any Pension and may take account of:

- (a) the wishes of the Pensioner; and
- (b) if required for the purpose of that Pension, actuarial advice obtained from an Actuary as to the appropriate amount and manner of the payments of the Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, the Investment Strategy guidelines for that Pension, and any prudential requirements imposed on the Trustee by the Act; and
- (c) any other relevant requirements of the Act or the Responsible Authority.

54.4 Pension Account

The Trustee must establish a Pension Account in respect of the Pensioner from which the Pension shall be paid. The Pension Account may be operated by the Trustee as the Trustee sees fit.

54.9 **Death of Pensioner**

Subject to any Agreed Pension Rules made in a Pension Agreement under clause 54.2(b), if a Pensioner dies leaving an amount in credit in the Pension Account of the Pensioner:

- (a) if a Nominated Beneficiary has been nominated by the Pensioner, the Trustee must, unless otherwise requested to the contrary by the Nominated Beneficiary, pay to the Nominated Beneficiary the balance of the Pension Account (either as a Pension or commuted to a lump sum) provided that the amount does not exceed an amount calculated in accordance with the requirements of the Act; or
- (b) if no Nominated Beneficiary has been nominated, the balance of the Pension Account must be paid to any one or more of the Dependants of the Pensioner as the Trustee may determine and/or to the legal personal representative of the Pensioner, subject to the requirements of the Act.

54.10 **Application to Convert Lump Sum Benefit to Pension**

A Member may by written application to the Trustee elect to convert to a Pension the whole or any part of a Benefit which is payable as a lump sum but has not already been paid under this Deed.

54.11 **Commutation of Pension to a Lump Sum**

- (a) On the written application of a Pensioner or Nominated Beneficiary of a deceased Pensioner, the Trustee must commute to a lump sum the whole or any part of a Pension payable from the Fund to the Pensioner or Nominated Beneficiary, as the case may be, provided that the commutation would not cause the Trustee or the Fund to breach any relevant requirement of the Act.
- (b) The Trustee must pay the amount of the commuted Pension in the same manner as a lump sum Benefit which is payable upon retirement in accordance with the provisions of this Deed.
- (c) If part of a Pension is commuted to a lump sum Benefit, the Trustee may reduce the total amount of the instalments in respect of the balance of the Pension payable to the Pensioner by an amount that the Trustee considers appropriate subject to the compliance with any relevant requirement of the Act.

54.12 **Purchase of Pension or Annuity from Third Party**

A Member may request that the Trustee apply the Benefit payable to the Member to purchase a Pension or Annuity for or in respect of the Member from a third party.

that the payments and requirements of that Fixed Term Income Stream comply in all other relevant respects with the requirements of the minimum "pension standards" specified in the Act which must be met for the Fixed Term Income Stream to be measured against the pension RBL (within the meaning of the Act) when determining the maximum amount of concessional taxed benefits of the Pensioner; and

- (b) if necessary, the Trustee must obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Fixed Term Income Stream after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Fixed Term Income Stream, the balance of the Pensioner's Pension Account, and any prudential requirements imposed on the Trustee by the Act in order that the Trustee can meet the requirements specified in paragraph (a) above.

54.16 Market Linked Income Stream

If the Agreed Pension is a Market Linked Income Stream, then the Agreed Pension Rules in the Pension Agreement that apply to that Market Linked Income Stream must specify or ensure that:

- (a) payments of the Market Linked Income Stream will be made at least annually for a specified fixed period which period is:
- (i) not shorter than any minimum period specified by the Act for the Market Linked Income Stream; and
 - (ii) not longer than any maximum period specified by the Act for the Market Linked Income Stream;
- (b) the total amount of the payments to be made in a year (excluding payments by way of any commutation but including payments made under payment split) is determined in accordance with the Act;
- (c) the Market Linked Income Stream does not have a residual capital value;
- (d) the Market Linked Income Stream cannot be commuted except in a manner that complies with or does not contravene any relevant requirement of the Act;
- (e) if the Market Linked Income Stream reverts, it does not have a reversionary component greater than 100% of the balance of the Pension Account immediately before the reversion; and
- (f) if the Market Linked Income Stream is commuted, the commutation amount is not greater than the balance of the Pension Account immediately before the commutation.

56.4 **Unrestricted Non-Preserved Benefits**

The Trustee may pay to a Beneficiary at any time any part of a Member's Benefit comprising unrestricted non-preserved benefits within the meaning of, and as permitted by, the Act.

56.5 **Temporary-Residents Permanently Departing Australia**

If a Member was the holder of an eligible temporary resident visa within the meaning of the Act that has expired or that has been cancelled and the Member has departed from Australia, the Trustee must upon receiving a request from the Member and being satisfied of the foregoing pay that Member's Benefit to that Member as a single lump sum in a time and manner as permitted by the Act and after withholding or deducting any Taxation or other charges that the Trustee is required or entitled to withhold or deduct.

57. **CONDITIONS FOR PAYMENT OF PRESERVED BENEFITS**

57.1 **Entitlement to Preserved Benefit**

A Beneficiary is only entitled to receive a Benefit comprising preserved benefits within the meaning of, and as permitted by, the Act.

57.2 **Member May Request Transfer**

A Member may request the Trustee to transfer the preserved Benefit to another Approved Superannuation Entity selected by the Member and in which the Member is a participant or eligible to participate.

57.3 **Trustee May Transfer Preserved Benefit**

If the Trustee does not receive a request from a Member under clause 57.2 and the Trustee is satisfied that there exists an Approved Superannuation Entity in which the Member is a participant or eligible to participate and the trustees thereof are authorised and willing to accept a transfer of the preserved Benefit, then the Trustee may transfer that preserved Benefit to that other Approved Superannuation Entity without the Member's request or consent.

57.4 **Power of Attorney**

The Member will be deemed to have irrevocably appointed the Trustee as the attorney for that Member for the purpose of securing that Member's participation in the Approved Superannuation Entity to which the transfer is made and the Trustee may act unilaterally in the name of the Member for that purpose.

defined in the Act if the forfeiture of those minimum benefits is not permitted by the Act.

58.5 **Severability**

If any part of this clause is illegal or invalid, that part is deleted from this clause and the legality and validity of the remaining parts of this clause will not be affected by the deletion.

59. **POSTPONEMENT OF BENEFIT PAYMENTS**

59.1 **To Facilitate Administration**

Subject to the compliance with the Act, the Trustee may for the purpose of facilitating the administration of the Fund postpone the commencement of the payment of any Benefit for any period not exceeding six months or, with the approval of the Beneficiary to which the Benefit is payable, a longer period after the happening of the event upon which the Benefit becomes payable.

59.2 **At Request of Beneficiary**

Subject to the compliance with the Act, the Trustee may at the request in writing of any Beneficiary entitled to receive payment of a Benefit withhold payment of that Benefit for any a period of time that is agreed between the Trustee and the Beneficiary.

60. **TRANSFERS FROM APPROVED SUPERANNUATION ENTITIES**

60.1 **Trustee May Take Interest**

If a Member is or was a member of or a beneficiary under any other Approved Superannuation Entity, the Trustee may at the request of that Member receive from the trustee of the other Approved Superannuation Entity the whole or any part of the interest of that Member in the other Approved Superannuation Entity.

60.2 **Trustee To Hold Subject to this Deed**

The Trustee must hold any interest transferred to the Trustee under this clause as part of the Fund in an Accumulation Account for that Member.

60.3 **Payment of Special Unpreserved Benefits**

If an interest which is transferred to the Fund from an Approved Superannuation Entity was not a preserved Benefit in the Approved Superannuation Entity, then subject to compliance with the Act and any other conditions pertaining to the payment of that interest, that interest may be paid by the Trustee to the Beneficiary of that interest at the request of that Beneficiary.

required by the Act to enable the Rollover Payment to be completed in accordance with the requirements of the Act.

63. TERMINATION OF THE FUND

63.1 Grounds for Termination

The Fund must be terminated if:

- (a) the Founder with the consent of a resolution of the Members determines to terminate the Fund and gives notice in writing of the determination to the Trustee;
- (b) it appears to the Trustee that the Fund is insolvent and the Trustee resolves to terminate the Fund;
- (c) there are no Members in the Fund and no Beneficiary with any interest in the Fund; or
- (d) subject to the approval of the Founder and a resolution (of approval) of the Members, the Trustee resolves to terminate the Fund.

63.2 Notice of Termination

Upon the termination of the Fund the Trustee must give notice in writing to each Employer and each of the Members that the Fund has or is to be terminated as from a specified date ("the Termination Date").

63.3 Winding up of the Fund

On and from the Termination Date:

- (a) no further Contributions may be made or accepted other than any arrears of Contributions due prior to the Termination Date;
- (b) the Trustee must call up and collect any arrears of Contributions;
- (c) the Trustee must pay out of the Fund any expenses incurred by or on behalf of the Fund;
- (d) the Trustee must distribute the balance of the Fund in a manner that the Trustee considers appropriate in accordance with the Deed until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (e) the Trustee must otherwise continue to administer the Fund in accordance with the Deed;

66.4 Consent by Beneficiary

If a proposed Amendment would adversely alter the Benefit of any Beneficiary, the proposed Amendment must not be made or become effective unless:

- (a) the Trustee has obtained that Beneficiary's consent in writing to the Amendment by following the procedure specified in the Act; or
- (b) the Act permits the proposed Amendment to be made by the Trustee without that Beneficiary's consent.

66.5 Notice to Members

As soon as practicable after the Deed has been amended, the Trustee must give to each Member a written statement explaining the nature and purpose of the Amendment and the effect of the Amendment on the entitlement of the Members.

66.6 Notice to Responsible Authority

If required by the Act, the Trustee must lodge a copy of the Deed or Minutes of Meeting effecting the Amendment with the Responsible Authority.

66.7 Amendments concerning Compliance with the Act

If the proposed Amendment is to be made to enable the Fund to comply with any relevant requirement of the Act, the Amendment may be made without the consent of any Member even if the Member's Benefit may be adversely altered by the Amendment.

66.8 Restriction on Amendments

An Amendment must not be made to this Deed (including an Amendment to this clause) if it would have the effect or result that the Fund does not have or will not continue to have:

- (a) the sole or primary purpose of providing Old-Age Pensions as provided in this Deed; and or in the alternative,
- (b) a company as the Corporate Trustee of the Fund.

67. REPLACEMENT OF THE FOUNDER**67.1 Founder May Replace**

- (a) The Founder may at any time by written instrument (including a will) resign from the position and/or appoint another person to hold the position of Founder (in place of or jointly with the current Founder).

69. **PROOF OF ENTITLEMENT BY BENEFICIARIES**

Any person claiming to be entitled to any Benefit must, if requested by the Trustee produce to the Trustee satisfactory evidence of that entitlement and do the acts and execute the documents that the Trustee may reasonably require.

70. **NO PERSONAL CLAIM OF MEMBERS OR DEPENDANTS FOR INTEREST**

No Beneficiary or person claiming through or on behalf of a Beneficiary is entitled to claim payment of any interest in the Fund, except as provided in this Deed.

71. **COMPENSATION RIGHTS OF MEMBERS NOT LIMITED**

This Deed does not affect any rights of a Member or the legal personal representative of a Member arising under any statutory enactment or at common law in circumstances where the Member is injured or dies as a result of an event arising in the course of the employment of the Member.

72. **FAMILY LAW PROCEEDINGS**

72.1 **Operation of this Clause**

- (a) Without limitation to clause 3 of this Deed, the Trustee must act in conformity with any obligations imposed on the Trustee under the Family Law Act ("the Act") even if this Deed does not authorise that act or prohibits that act.
- (b) An expression that is defined in the Act will have the same meaning when that expression is used in this clause.

72.2 **Superannuation Agreement**

- (a) The Trustee must comply with the Act in giving effect to a superannuation agreement that is in force and made under the Act between a Member and a non-member spouse of that Member.
- (b) Whenever any splittable payment becomes payable in respect of a superannuation interest identified in the superannuation agreement which is not an unsplittable interest:
 - (i) the Trustee must pay to the non-member spouse the amount (if any) calculated in accordance with the Act; and
 - (ii) the Trustee must make a corresponding reduction in the Benefit Entitlement of the Member to whom the splittable payment would have been made but for the payment split.
- (c) The payment of the entitlement of the non-member spouse under a payment split must, if required by the SIS Act, be made by the Trustee to

**SCHEDULE
PARTICULARS OF THE FUND**

NAME OF THE FUND: Semczyszyn Beard Superannuation Fund

DATE OF THIS DEED: 07 December 2004

**COMMENCEMENT DATE
OF THE FUND:** 07 December 2004

FOUNDER: Steven Semczyszyn

TRUSTEES: Steven Semczyszyn
Michelle Beard

NOTE: The Fund Reference Number is: 033498

The drafting of this Trust Deed has been undertaken by:
Madgwicks, Lawyers, Level 19, 535 Bourke Street, Melbourne Vic. 3000
Ref: Mr Rick Goldberg

EXECUTED by the Parties as a Deed on the Execution Date:

BY THE FOUNDER
- INDIVIDUAL

SIGNED SEALED and DELIVERED
by the said
Steven Semczyszyn
in the presence of:

)
)
) Steven Semczyszyn
)

Michelle Beard Witness

BY THE TRUSTEE
- INDIVIDUALS

SIGNED SEALED and DELIVERED
by the said
Steven Semczyszyn
in the presence of:

)
)
) Steven Semczyszyn
)

Michelle Beard Witness

SIGNED SEALED and DELIVERED
by the said
Michelle Beard
in the presence of:

)
)
) Michelle E Beard
)

Michelle Beard Witness