

ACCOUNTANTS  
COPY

## **Rusty Superannuation Fund**

**Prepared for NTAA Corporate by  
Australian Business Structures  
and Holding Redlich Lawyers**

**Order: 485484**

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## DIVISION A MANAGEMENT AND ADMINISTRATION

### 4 INTERPRETATION - DEFINITIONS

In this Deed, unless the context otherwise requires:

**Account** means Accumulation Account or Pension Account;

**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;

**Allocated Pension** means a Pension that complies with clause 28;

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

**Approved Benefit Arrangement** means a fund or benefit arrangement other than the Fund, including without limitation:

- (a) another Complying Superannuation Fund;
- (b) an Approved Deposit Fund;
- (c) an Annuity arrangement into which or from which assets of the Fund may be transferred without causing the Fund to be in breach of or to fail to comply with the Relevant Law; and
- (d) an Eligible Rollover Fund;

**Approved Deposit Fund** in relation to a year of income means a fund which is complying Approved Deposit Fund under the Tax Act;

**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 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 a Dependant or Dependents of the Member or Beneficiary;

**Co-Contribution** means a payment made to the Fund by the Commonwealth Government pursuant to the Superannuation (Government Co-Contribution for Low Earners) Act 1993.

**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;

**Defined Benefit Pension** has the meaning given to it in the Relevant Law;

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

- (a) the Spouse, Widow or Widower of the primary person; or
- (b) a child of the primary person including a person who, in the opinion of the Trustee, is or was actually maintained by the primary person as the child of the primary person; or
- (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; or
- (d) any other person who, in the opinion of the Trustee, was substantially dependent on the primary person at the relevant time;

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

**Eligible Rollover Fund** has the meaning given to it in Part 24 of the Superannuation Industry (Supervision) Act 1993;

**Eligible Termination Payment** has the meaning given to it in section 27A of the Tax Act;

**Employee** means a person in the employment of an Employer provided that an Employer may deem any person to be an Employee for such period and on such terms and conditions as it determines for the purposes of the Employer making Contributions in order to avoid liability for the superannuation guarantee charge under the Guarantee Act;

**Employer** has the meaning given to it in the Relevant Law and includes a Participating Employer;

**Employment Relationship**, as between 2 persons (one person and the other person), means circumstances in which:

- (a) one person is an employee of the other person within the ordinary meaning of that term or within the meaning of section 15A of the Superannuation Industry (Supervision) Act 1993; or

- (b) one person is an employee of an employer-sponsor of the Fund and the employer-sponsor is any of the following in relation to the other person:
- (i) a Relative of the other person; or
  - (ii) either of the following:
    - A. a body corporate of which the other person, or a Relative of the other person, is a Director;
    - B. a body corporate related to that body corporate; or
  - (iii) the trustee of a trust of which the other person, or a Relative of the other person, is a beneficiary; or
  - (iv) a partnership, where:
    - A. the other person, or a Relative of the other person, is a partner in the partnership; or
    - B. the other person, or a Relative of the other person, is a Director of a body corporate that is a partner in the partnership; or
    - C. the other person, or a Relative of the other person, is a beneficiary of a trust, if the trustee of the trust is a partner in the partnership; or
- (c) one person is taken to be an employee of the other person within the meaning of the Relevant Law

but does not include a person who by virtue of the Relevant Law is not to be taken to be an employee of the other person;

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

**Financial Assistance** means financial assistance granted to the Fund under Part 23 of the Superannuation Industry (Supervision) Act 1993 or under any other 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 Gainful Employment for at least 30 hours each week or 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), after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable 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 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;

**Levy** includes a levy payable by the Fund to the Regulator in accordance with the Superannuation Supervisory Levy Act 1991, the Superannuation (Financial Assistance Levy) Act 1993 and any other legislation or regulations which impose a levy or levies on the Fund;

**Market Linked Pension** means a Pension that complies with clause 29;

**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, including, where appropriate, the Principal, and Membership means membership of the Fund;

**Nominated Recipient** means a Dependant or the legal personal representative of a Member or Beneficiary nominated by the Member or Beneficiary for the receipt of any Benefit arising on the death of the Member or Beneficiary;

**Non-Commutable Allocated Pension** means a pension payable under clause 28.9 to a Member who has attained their Preservation Age but has not yet attained their Normal Retirement Age.

**Non-Commutable Market Linked Pension** means a pension payable under clause 29.5 to a Member who has attained their Preservation Age but has not yet attained their Normal Retirement Age.

**Non-Preserved Amount** means an amount including a Roll Over Payment 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;

**Participating Employer** means any person, firm or corporation admitted to participation in the Fund under clause 36;

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

(a) in respect of Contributions, for at least 40 hours in a period of not more than 30 consecutive days in that financial year;

(b) in respect of Benefits, for at least 240 hours during that financial year;

**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 Part VIII of the Family Law Act 1975; or

(b) a superannuation agreement under Parts VIIIA and VIIB of that Act;

**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;

**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;

**Principal** means the person so described in Schedule A;

**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 means:

- (a) for the purposes of the definition of Employment Relationship and clauses 8, 10 and 14 any of the following:
- (i) the parent, child, grandparent, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin, or second cousin of the person or of his or her Spouse or former Spouse;
  - (ii) another person having such a relationship to the person or to his or her Spouse or former Spouse because of adoption or re-marriage; and
  - (iii) the Spouse or former Spouse of the person or a person referred to in paragraphs (a)(i) or (a)(ii);
- (b) for any other purpose in this Deed, including clauses 15 and 32 any of the following:
- (i) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the Spouse of the person; and
  - (ii) the Spouse of the person or of any person specified in sub-paragraph (b)(i);

**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) the Superannuation Industry (Supervision) Act 1993, Superannuation Industry (Supervision) Regulations 1994, Corporations Act 2001, Corporations Regulations 2001, Financial Sector (Collection of Data) Act 2001, Superannuation (Resolution of Complaints) Act 1993, Family Law Act 1975, Bankruptcy Act 1966, 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 a Pension payable or which may become payable from the Fund which the Trustee and the Pensioner have agreed will meet the requirements of an assets test exempt pension under the Social Security Act 1991, the relevant provisions of that Act; and
- (c) 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;

**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 as the person who is to receive the Pension upon the death of the Pensioner;

**Roll Over Payment** means an Eligible Termination Payment made or received by the Trustee at the request of a Member or former Member or in other circumstances in accordance with the Relevant Law to or from any Approved Benefit Arrangement including:

- (a) an Eligible Termination Payment made by an Employer in consequence of the termination of the employment of a Member; and
- (b) either a capital gains tax exempt amount or a deemed Eligible Termination Payment in relation to such an amount in relation to a Member within the meaning of the Relevant Law;

**Self Managed Superannuation Fund** has the meaning given to it in Part 1 of the Superannuation Industry (Supervision) Act 1993;

**Shortfall Component** has the meaning given to it in section 64 of the Guarantee Act;

**Spouse** means in the definitions of Contribution Split, Dependant, Relative and clause 22:

- (a) a person legally married to a Member or other relevant person (**Relevant Person**) at any time; or
- (b) a person who, although not legally married to the Member or Relevant Person, in the opinion of the Trustee, lives with a Member or Relevant Person on a bona fide domestic basis as the husband or wife of the Member or Relevant Person and in relation to a deceased Member or Relevant Person the term Widow or Widower includes such a person,

provided that where there is more than one such person the Trustee must determine which one or more of them will be deemed to be the spouse and, if more than one person is so deemed, the Trustee must determine the proportions in which a Benefit payable to the spouse is to be divided between them;

**Superannuation Contributions Surcharge** has the meaning given to it by the Superannuation Industry (Supervision) Regulations 1994;

**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;

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

**Temporary Total Disablement:**

- (a) has the meaning given to it in any Policy effected by the Trustee with an Insurer in respect of a Member and in force at the time of the disablement of the Member; or
- (b) means such physical or mental incapacity of a temporary nature (whether due to ill-health, accident or injury or other cause) that renders the Member incapable of continuing to be employed in the position or Gainful Employment in which the Member was employed immediately prior to the date of becoming incapacitated but does not include Total and Permanent Disablement and Temporarily Totally Disabled has a corresponding meaning. All questions regarding whether or not a Member is Temporarily Totally Disabled and the payment of any income Benefit on the Member becoming Temporarily Totally Disabled must be determined by the Trustee and without limiting the generality of any of the foregoing the Trustee may determine not to provide any Temporary Total Disablement Benefits in respect of all Members or Members of a designated class;

**Total and Permanent Disablement:**

- (a) has the meaning given to it in any Policy effected by the Trustee with an Insurer in respect of a Member and in force at the time of the disablement of the Member; or
- (b) means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience,

and the expression Totally and Permanently Disabled has a corresponding meaning;

**Trustee** means the trustee or trustees for the time being of the Fund whether original, additional or substituted appointed under clause 14;

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

**6 INTERPRETATION - GENERAL****6.1 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.

**6.2 Headings to Clauses**

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

**6.3 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.

**6.4 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.

**6.5 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, 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.

#### **5.6 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 Employer's Powers not Prejudiced**

Nothing in this Deed affects the powers of an Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between an Employer and its Employee. The existence or cessation of any actual or prospective or possible Benefit is not grounds for claiming or increasing damages in any action brought against an Employer in respect of any termination of employment or otherwise.

#### **6.2 Exercise of Employer's and Trustee's Rights**

All powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on an Employer or 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 Employer or Trustee:

- (a) where the Employer or Trustee is a company, then by resolution of its Directors 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 at a meeting of such persons where decisions are to be made by a majority of such persons holding the office of Trustee or by such greater number required by the Relevant Law; or
- (c) where an Employer consists of individuals, then by a majority of such individuals, provided that any requirements of the Relevant Law are satisfied.

#### **6.3 Equality of Votes**

Where:

- (a) the Trustee is a company, but any decision making procedure detailed in its constitution does not address the resolution of an equality of votes; or
- (b) the Trustee consists of Individual Trustees;

and there is an equality of votes on any resolution tabled for consideration, the Director or Individual Trustee with the highest Account balance will have a second or casting vote.

#### **6.4 Rights of Members**

The provisions of this Deed do not in any way affect the right of a Member or the personal representative 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.

#### **6.5 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, Dependents 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.

#### **6.6 Family Law**

- (a) Subject to the following provisions of this clause 6.6, 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 6.6(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 6.6(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, Beneficiaries and Employers 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 Initial Members**

Each person who is listed in Schedule A as an Initial Member will be a Member. Each person listed in Schedule A must:

- (a) if the person is in an Employment Relationship with any other person listed in Schedule A as an initial Member, be a Relative of the other person; and

- (b) not be disqualified by the Relevant Law from holding office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee.

## 8.2 Other Members

Subject to the following provisions of this clause 8.2, the Trustee may invite such persons (other than an Initial Member) to become Members as the Trustee in its absolute discretion determines. 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 under the Relevant Law 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 in an Employment Relationship with 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.

## 8.3 Admission to Membership

- (a) On receipt of an application for Membership under clause 8.2, 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.

## 8.4 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 8.4, 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.

#### **8.5 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.

#### **8.6 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.

#### **8.7 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 may enter into an Employment Relationship with any other Member and the Member is not a Relative of the other Member; or
- (b) the Member may become disqualified under the Relevant Law from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee.

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

- (a) If at any time, a Member ceases to satisfy clauses 8.1(b), 8.2(b) or 8.2(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.

- (b) For the purposes of clause 8.8(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 Rollover 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;
- (b) 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;
- (d) 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 effect that:

- (a) the Member enters into an Employment Relationship with any other Member where the Member is not a Relative of the other Member; or
- (b) the Member becomes disqualified under the Relevant Law 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;
- (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 Payment;
- (j) any Shortfall Components received by the Fund;
- (k) any Financial Assistance received by the Fund; and
- (l) any other Contributions 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 Payment which the Trustee considers it appropriate to credit;
- (b) any Contributions made by a Member;
- (c) any Contributions made in respect of a Member or Beneficiary 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 15.5(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 28.7(b) or clause 29.4(b) ;
- (n) any amounts transferred from the Equalisation 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 Payment which the Trustee considers it appropriate to debit;
- (b) any other 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 Payment 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 32.1(c);
- (h) such negative earnings as may be determined by the Trustee in accordance with clauses 12.4, 12.6 or 15.5(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; and
- (n) 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 15.5(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 the Equalisation 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 an Account; and
  - (v) any Financial Assistance received by the Fund and not credited to an 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 15.5(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 an 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 an 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 an Account as the Trustee determines to be equitable;
- (vii) any amount of Levy payable by the Fund and not debited to an Account; and
  - (viii) any income transferred from the Income Account to the Equalisation 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.
  - (d) Subject to clause 15.5(e), an amount determined by application of the Fund Earning Rate must be allocated from the Income Account to each 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 the Equalisation 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 Equalisation Account

- (a) The Trustee has power at any time to establish an Equalisation Account of the Fund. The Equalisation Account may be credited with the following:
  - (i) an amount transferred from the Income Account under clause 12.4;
  - (ii) such portion as the Trustee considers appropriate of an amount paid into the Fund as a transfer or Roll Over Payment;
  - (iii) an amount transferred from the Forfeiture Account under clause 26.4(f); and
  - (iv) such other amounts as the Trustee considers appropriate.
- (b) Money held in the Equalisation Account does not form part of any Account. Any income earned by the Fund on the money held in an Equalisation Account must be credited to the Equalisation Account.
- (c) An Equalisation Account may, at the discretion of the Trustee, be used for the following purposes:
  - (i) to generally give effect to the reserving strategy established by the Trustee to stabilise the investment earnings of the Fund;
  - (ii) to provide for such contingencies as the Trustee may determine;

- (iii) to augment the Fund Earning Rate;
- (iv) to meet any Taxation payments payable by the Fund;
- (v) to pay any expenses or charges payable by the Fund;
- (vi) to or for the benefit of any Member, Pensioner, Beneficiary or Former Member including augmentation of an Account or on any other basis that does not breach the Relevant Law; and
- (vii) 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 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 15.5(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 Information for Trustee**

When requested by the Trustee, an Employer must give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund. The Trustee may act on any information given to it by an Employer under this Deed and is not required to verify the accuracy of that information.

### **13.6 Disclosure and Reporting Requirements**

The Trustee must arrange to provide to:

- (a) any Member, Pensioner and Beneficiary;
- (b) any Employer;
- (c) the Regulator;
- (d) any court;
- (e) any Actuary;
- (f) any Auditor; and



(g) 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 Trustee to be Constitutional Corporation**

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, provided that at all times while the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Relevant Law.

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

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

- (a) Individual Trustees;
- (b) a Constitutional Corporation; 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 in an Employment Relationship with 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 in an Employment Relationship with 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 Principal must put in place arrangements to ensure that:

- (a) where the Trustees comprises 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 Principal is satisfied that the person will become a Member under clause 8.2 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 Principal and 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 Principal and 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 Fund 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.

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 comprises the persons listed in Schedule A as Initial Members in accordance with clauses 14.4 or a Constitutional Corporation that satisfies the requirements of clause 14.3.
- (b) At all other times, and subject to clause 14.8, the Principal 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 Principal may accept the resignation in writing of any Trustee.
- (e) In the event that the Principal is unable or unwilling to determine who will act as Trustee, then a majority of the Members must determine who will act as Trustee and 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.

### **15 TRUSTEE'S INVESTMENT POWERS**

#### **15.1 Investment Strategy**

The Trustee must formulate and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Fund, which strategies may be reviewed from time to time and must be formulated and effected in accordance with the Relevant Law.

#### **15.2 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 15.1 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 Employer or any other person or organisation whatsoever 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.

### **15.3 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.

### **15.4 Interest of Trustee in Investment**

- (a) Subject to clause 15.4(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 15.4(a) applies in the manner prescribed under the Relevant Law.

#### 15.5 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 the opportunity of having amounts held in one or more of their 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 is provided with an opportunity to have an amount in an 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 is provided with an opportunity to have an amount in an 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 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 15.5(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 15.5(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 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.
- (f) Where an Employer contributes to the Fund in respect of a Member or Beneficiary or classes of Members or Beneficiaries, it may, to the extent and in the circumstances permitted under the Relevant Law, give directions to the Trustee regarding the investment strategy or strategies that may be pursued in relation to the Member or Beneficiary or classes of Members or Beneficiaries in respect of whom it contributes.

## **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 and to secure the repayment of money in any manner and on any terms (including with or without security) which the Trustee may deem advisable provided that such borrowing must not breach the Relevant Law;
- (d) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (e) to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund;
- (f) 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;
- (g) 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;
- (h) 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;

- (i) 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 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;
- (j) 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;
- (k) 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;
- (l) 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 clauses 18 and 19;
- (m) 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;
- (n) 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; and
- (o) 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**

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:

- (a) 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

- (b) 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.

### **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) 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
- (b) vary, limit or revoke any such 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 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) a Participating Employer makes a Contribution in respect of a Member who is a Member of more than one membership class,  
the Member or the Participating 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 other than a Participating 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 15.2; 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, neither a Member nor an Employer is 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 Contribution Obligation**

Where there is an agreement to contribute to the Fund in force between the Trustee and a Participating Employer the following provisions apply:

- (a) if at any time an obligation is imposed on a Participating Employer to make Contributions to another Complying Superannuation Fund providing retirement, death or disablement benefits in respect of Members then the Participating Employer may reduce its Contributions to the Fund by the amount of the contribution being made to the other fund in respect of those Members (who are members of the other fund);
- (b) the Contributions of a Participating Employer to the Fund terminate and the Employer ceases to be a Participating Employer for the purposes of the Fund on the date that:
  - (i) a deed of appointment placing the Participating Employer in receivership or under official management is executed by the appointor of that receiver or manager;
  - (ii) a resolution of its members or an order of a court places the Participating Employer in liquidation; or
  - (iii) the Participating Employer permanently terminates its Contributions to the Fund by notice in writing to the Trustee.

#### **22.6 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 if the Regulator so directs.

#### **22.7 Ineligible Contributions**

If the Trustee ascertains at any time that any Contribution or Shortfall Component has been accepted in breach of the provisions of this clause 22, the Trustee must refund such Contribution or Shortfall Component 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 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.

#### **22.8 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 22.8, 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.

**22.9 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 joins 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 may transfer the whole or any part of the amount in the Fund representing the Member's Benefit Entitlement or the Beneficiary's Benefit to the trustee of the Approved Benefit Arrangement, provided that a transfer 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 44, exceed the amount standing to the credit of the Member's Accumulation Account.

**23.3 Effect and Method of Transfer or Roll Over**

- (a) The Member or Beneficiary must complete and execute any documentation required by the Tax Act to enable the Trustee to complete the transfer or a Roll Over Payment to the Approved Benefit Arrangement in accordance with the Relevant Law.
- (b) The receipt of a transfer or Roll Over Payment 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.
- (c) On the completion of a transfer or Roll Over Payment in respect of a Member or Beneficiary under this clause 23, 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 Rollover 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 Rollover Fund; and
- (b) provide any information to the trustee of the Eligible Rollover 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 or the Bankruptcy Act 1966. 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 clauses 26.1 and 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 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 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 the Equalisation Account to be applied in accordance with clause 12.5;
- (g) for payment to such of the Employers of the Member or Beneficiary (if any) as the Trustee in its absolute discretion considers appropriate;
- (h) 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, 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 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 Allocated Pension or Non-Commutable Allocated Pension in accordance with the relevant conditions set out in clause 28;
- (b) a Market Linked Pension or a Non-Commutable Market Linked Pension in accordance with the relevant conditions set out in clause 29;
- (c) a Defined Benefit Pension or other type of Pension in accordance with the conditions set out in clause 30; or
- (d) any other form of pension which is acceptable to the Regulator or is within the requirements of the Relevant Law on such terms as the Trustee may determine.

### **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) 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 Payment 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 15.5(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 the Equalisation 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 Payment 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 Payment 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 32.1(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 15.5(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; and
- (xiv) 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 Pensions 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 pension liabilities. Where the value of the segregated assets is not sufficient or is more than sufficient to discharge the Fund's current pension liabilities, 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 ALLOCATED PENSION PAYMENT CONDITIONS**

#### **28.1 Method of Payment and Security of Allocated Pension**

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

- (a) the Allocated Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Allocated Pension must be paid at least annually during the life of the Pensioner or of a Reversionary Beneficiary, within the limits prescribed by the Relevant Law;
- (c) the amount of the Allocated 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 and minimum limits specified by the Relevant Law for the payment of an Allocated Pension;
- (d) the Allocated 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 Allocated 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 Allocated Pension meets the standards set by the Relevant Law, the Trustee will also treat such matters as immaterial.

#### **28.2 Pension Account Limitation**

Where an Allocated Pension is payable to or in respect of a Member or Beneficiary, or where the Trustee purchases an Annuity on behalf of a Member or Beneficiary, the total instalments of such Allocated Pension or the total purchase price of such Annuity must not exceed the amount standing to the credit of a Member or Pensioner in the relevant Account of the Member or Pensioner at the relevant time.

#### **28.3 Pension Increase**

Any Allocated Pension payable in accordance with the provisions of this Deed may be increased in the course of payment from time to time, if the Relevant Law permits the increase and it is so determined by the Trustee.

#### **28.4 Reversionary Beneficiary**

If a Pensioner dies while still in receipt of an Allocated Pension under this Deed, the Trustee must commence to pay the Allocated Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of the death of the Pensioner. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.

#### **28.5 Death of Pensioner**

In the event of the death of a Pensioner in respect of an Allocated Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:

- (a) no Reversionary Beneficiary has been nominated; or

- (b) the Reversionary Beneficiary is not a Dependant of the Pensioner at the time of death of the Pensioner,  
the balance of such Pension Account must be dealt with in accordance with the provisions of clause 32.

## 28.6 Commutation of Allocated Pension

- (a) The Trustee may commute the whole or any part of an Allocated Pension that is payable from the Fund to the Pensioner where:
- (i) the Relevant Law permits the commutation of that Allocated Pension; and either:
  - (ii) the Pensioner makes a written application to the Trustee for the commutation of that Allocated Pension; or
  - (iii) the Trustee chooses to commute that Allocated Pension on its own initiative.
- (b) An Allocated Pension will only be commuted where:
- (i) the commutation would not disadvantage the Fund itself, or the Employers sponsoring the Fund, or the remaining Members or Pensioners; and
  - (ii) the proceeds of the commutation do not exceed the amount standing to the credit of the Pension Account immediately before the commutation.
- (c) The Trustee may only commute the whole or part of the Allocated Pension where one of the following applies:
- (i) the commutation results from the death of the Pensioner; or
  - (ii) the sole purpose of the commutation is:
    - (A) to pay a Superannuation Contributions Surcharge; or
    - (B) to provide for an entitlement of a non-member spouse where that entitlement is created by a Payment Split; or
    - (C) to meet the rights of a Member to receive their Benefit Entitlement or Benefit under the Corporations Act 2001; or
  - (iii) in the case of a partial commutation, the Pension Account balance immediately after the commutation would be equal to or would exceed the remaining minimum amount of the Allocated Pension payments otherwise due to be made in the financial year in which the commutation occurred; or
  - (iv) the minimum amount as specified in the Relevant Law that must be paid in the financial year during which the Allocated Pension is being commuted has actually been paid; or
  - (v) the Relevant Law otherwise permits the Allocated Pension to be commuted.
- (d) Where any amount remains in the relevant Pension Account after the Trustee has paid the entitlements of all the relevant Pensioners then that remaining

amount must be dealt with as though it were a forfeited Benefit in accordance with clauses 26.3 and 26.4.

### **28.7 Application of Commuted Amount**

- (a) Subject to this clause 28.7, and any other applicable provisions of this Deed, the Trustee must pay the proceeds of the commutation in respect of the Allocated Pension being commuted to the relevant Pensioner or to the legal personal representative of the relevant Pensioner.
- (b) As an alternative to clause 28.7(a) the Trustee may 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.

### **28.8 Adjustment of Allocated Pension following the Commutation**

Following the commutation of a part of an Allocated Pension, the Trustee must reduce the total amount of the instalments of any Allocated Pension payable to the Pensioner. This reduction is to be of such an amount as the Trustee considers appropriate.

### **28.9 Non-Commutable Allocated Pension**

- (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 Allocated Pension on such terms as the Trustee and Member or Beneficiary may agree.
- (b) The Trustee may only pay a Non-Commutable Allocated Pension to a Member or Beneficiary in accordance with the Relevant Law.
- (c) Where a Non-Commutable Allocated Pension is commuted in accordance with the Relevant Law, the resulting Eligible Termination Payment must not be cashed unless the purpose of the commutation is:
  - (i) to cash an unrestricted non-preserved benefit; or
  - (ii) to pay a superannuation contributions surcharge; or
  - (iii) to give effect to an entitlement of a non-member spouse under a Payment Split, or
  - (iv) otherwise permitted under the Relevant Law; or
 before the commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction is nil.

## **29 MARKET LINKED PENSION PAYMENT CONDITIONS**

### **29.1 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 Pensioner may elect to receive in any year an amount of the Market Linked Pension in the range between 90%-110% of the amount determined in accordance with the Relevant Law;
- (e) the Market Linked Pension does not and will not have a residual capital value;
- (f) if the Market Linked Pension reverts, it will not have a reversionary component greater than 100% of the Benefit payable before the reversion;
- (g) 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:
- (h) the capital value of the Market Linked Pension and the income from it cannot be used as security for a borrowing.

### **29.2 Market Linked Pension Account Residue**

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 Pension Account of the Pensioner, and where there is no Reversionary Beneficiary, the Trustee must, if the Pension is neither commuted under clause 29.3 nor transferred under clause 29.1, ensure that the amount standing to the credit of the Pension Account is:

- (a) transferred to the Equalisation Account; or
  - (b) dealt with as though it was a forfeited Benefit in accordance with clauses 26.3 and 26.4; or
  - (c) dealt with otherwise as permitted by the Relevant Law,
- or any combination of the above as the Trustee determines.

### **29.3 Commutation of Market Linked Pension**

- (a) The Trustee may commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner or Reversionary Beneficiary where:
  - (i) the Relevant Law permits the commutation of that Market Linked Pension;
 and either:
  - (ii) the Pensioner or Reversionary Beneficiary makes a written application to the Trustee for the commutation of that Market Linked Pension; or
  - (iii) the Trustee chooses to commute that Market Linked Pension on its own initiative.
- (b) A Market Linked Pension will only be commuted where:
  - (i) the commutation would not disadvantage the Fund itself, or the Employers sponsoring the Fund, or the remaining Members or Pensioners;
  - (ii) the proceeds of the commutation do not exceed the amount standing to the credit of the Pension Account immediately before the commutation; and
  - (iii) one of the following applies:



- (A) the commutation is made within six months after the commencement day of the Market Linked Pension and is not a commutation of a Pension funded from the commutation of another Pension;
- (B) the commutation is made on the death of the Pensioner to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to one or more Dependants of the Pensioner or to the estate of the Pensioner; or
- (C) the commutation is made on the death of a Reversionary Beneficiary to the benefit of another Reversionary Beneficiary or, if there is no other Reversionary Beneficiary, to one or more Dependants of the Reversionary Beneficiary or to the legal personal representative of the Reversionary Beneficiary; or
- (D) the commutation is made on the death of the Pensioner as a lump sum to an individual where the Trustee has made reasonable enquiries but been unable to locate a person mentioned in either clause 29.3(b)(iii)(B) or 29.3(b)(iii)(C); or
- (E) the commutation is only made on the death of both the Pensioner and the Pensioner's Spouse where required by the Relevant Law; or
- (F) the Eligible Termination Payment resulting from the commutation is transferred directly to the purchase of another Market Linked Pension; or
- (G) the commutation is made to pay a Superannuation Contributions Surcharge; or
- (H) the commutation is made to provide for an entitlement of a non-member spouse where that entitlement is created by a Payment Split; or
- (I) the sole purpose of the commutation is to meet the rights of a Member to receive their Benefit Entitlement or Benefit under the Corporations Act 2001; or
- (J) in the case of a partial commutation, the Pension Account balance immediately after the commutation would be equal to or would exceed the remaining amount of the Market Linked Pension payments otherwise due to be made in the financial year in which the commutation occurred; or
- (K) the minimum amount specified in the Relevant Law that must be paid in the financial year during which the Market Linked Pension is being commuted has actually been paid; or

(L) the Relevant Law otherwise permits that Market Linked Pension to be commuted.

- (c) Where any amount remains in the relevant Pension Account after the Trustee has paid the entitlements of all the relevant Pensioners then that remaining amount must be dealt with as though it were a forfeited Benefit in accordance with clauses 26.3 and 26.4.

#### **29.4 Application of Commuted Amount**

- (a) Subject to this clause 29.4 and any other applicable provisions of this Deed, the Trustee must pay the proceeds of the commutation of a Market Linked Pension to the relevant Pensioner or one of the Dependants of the relevant Pensioner or to the legal personal representative of that Pensioner.
- (b) As an alternative to clause 29.4(a) the Trustee may 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.

#### **29.5 Non-Commutable Market Linked Pension**

- (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 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 commuted in accordance with the Relevant Law, the resulting Eligible Termination Payment must not be cashed unless the purpose of the commutation is to cash an unrestricted non-preserved benefit or before the commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction is nil, or the commutation is otherwise permitted under the Relevant Law.

### **30 DEFINED BENEFIT AND OTHER PENSION PAYMENT CONDITIONS**

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 a Defined Benefit Pension or other type of Pension 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 TRANSFER IN SPECIE**

#### **31.1 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.

### **31.2 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.

### **31.3 No Beneficial Interest**

With the exception of the provisions of this clause 31 and clause 15.5, 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.

## **32 PAYMENT OF BENEFITS ON DEATH**

### **32.1 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) otherwise, 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 (including any Nominated Recipients) in such proportions, form, manner and at such times as the Trustee, in its discretion, determines from time to time; and
- (c) if there are no Dependants and there is no legal personal representative, may:
  - (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.

### **32.2 Discharge of Trustee**

The receipt by a Dependant, the legal personal representative, Relative or other person of a Benefit paid under this clause 32 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.

## **33 PAYMENT OF BENEFITS**

### **33.1 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.

### **33.2 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.

### **33.3 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.

### **33.4 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) the Nominated Beneficiary, the Reversionary Beneficiary, the legal personal representative, any known Dependents 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 33.4 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.

### **33.5 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 33.4, 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.

### **33.6 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.

### **33.7 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.

### **33.8 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.

### **33.9 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 32.

### **33.10 Limitation on Benefit Payments**

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

## **34 PAYMENT OF TAXATION AND LEVIES**

### **34.1 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.

### **34.2 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).

### **34.3 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 34 from the Income Account or the Accounts of Members.

### **34.4 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.

### **34.5 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.

## **35 POLICIES OF ASSURANCE**

### **35.1 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.

### **35.2 Trustee Required to Effect Policy**

Notwithstanding anything in clause 35.1, 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.

### **35.3 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.

### **35.4 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.

### **35.5 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 35.5 be applicable to them, the surrender value of such endowment or whole of life Policy.

## **36 PARTICIPATING EMPLOYERS**

The Trustee may admit any person, firm or corporation to be a Participating Employer on receipt of an application in such terms, or such details, as may be required by the Trustee.

## **37 VARIATION OF TRUST DEED**

The provisions of this Deed including this clause 37 may be added to, amended, altered, modified, rescinded or varied (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 of Deed**

The Variation must be:

- (a) by oral declaration or written resolution of the Trustee and a certified copy of minutes of a meeting of the Trustee confirming any such oral declaration or a certified copy of any such written resolution must be furnished to the Regulator if required by the Relevant Law; or

- (b) by Deed executed by the Trustee and a copy of such Deed must be forwarded to the Regulator if required by the Relevant Law.

### **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 (**Termination Date**) in the following circumstances:

- (a) if no Members remain in the Fund;
- (b) if the Trustee determines for any reason that the Fund should be wound up; or
- (c) 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 Employer and Member that the Fund is to terminate on the Termination Date; and



- (b) arrange to pay or transfer Benefits to Members, former Members and Beneficiaries in accordance with clause 38.3, after deducting from the assets of the Fund the costs of administering and winding up the Fund.

### **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 or their Dependants are entitled at the Termination Date;
- (b) additional Benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion may determine; and
- (c) payment to such of the Employers of Members or former Members (if any) as have made Contributions to the Fund 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.

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

### **40 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 41 and 43.

### **41 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 Total and Permanent Disablement, the death of the Member or in other circumstances permitted by the Relevant Law.

**42 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 42(a) must be determined by the Trustee and notified to Members.

**43 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:

(a) the death of the Member; or

(b) the 65th birthday of the Member, or at such later date as is required by the Relevant Law in relation to the Member.

**44 BENEFIT AUGMENTATION**

In circumstances where a Member ceases to be a Member, the Trustee may determine to pay some part of the Equalisation Account under clause 12.5(c)(vi) to the Member's Accumulation Account for purposes of the payment of a Benefit.

**45 DEALING WITH BENEFITS****45.1 Payment of Benefits**

Where a Member or Beneficiary is eligible to receive payment of a Benefit under clauses 46, 47.1, 48, 49 or 50 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.

**45.2 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 32;

**(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.

**46 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.

**47 DISABLEMENT****47.1 Total and Permanent Disablement**

In the event that a Member becomes, in the opinion of the Trustee, Totally and Permanently Disabled, then such Member, on being notified by the Trustee of the fact that the Trustee has formed such an opinion, 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.

**47.2 Temporary Total Disablement**

- (a) In the event that a Member becomes, in the opinion of the Trustee, Temporarily Totally Disabled, then such Member, on being notified by the Trustee of the fact that the Trustee has formed such an opinion, must 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 Total Disablement, the amount payable to the Trustee as a result of the Temporary Total Disablement 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 47.2 is subject to the limitations contained in the Relevant Law.
- (b) A Member ceases to be Temporarily Totally Disabled in the event that the Member:

- (i) ceases to satisfy the definition of Temporary Total Disablement;
  - (ii) attains Normal Retirement Age; or
  - (iii) becomes entitled to another Benefit payable under this Deed.
- (c) Any income Benefit under this clause 47.2 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.

#### **48 EARLY RETIREMENT FROM EMPLOYMENT**

In the event that a Member for any reason other than Total and Permanent Disablement:

- (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.

#### **49 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 as the Trustee may in its discretion determine.

#### **50 PAYMENT ON DEATH**

##### **50.1 Benefits**

On the death of a Member while still 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 32.

##### **50.2 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.

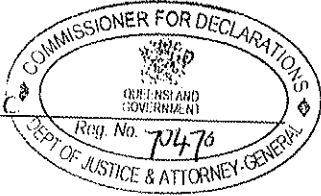
**EXECUTED** as a Deed on the date set out in Schedule A.

Please date over page

SIGNED SEALED AND DELIVERED by )  
the said Russell John Ravenscroft as )  
Principal in the presence of: )

x *RJ Ravenscroft*  
Russell John Ravenscroft

x *A. C. Dec*  
Witness



EXECUTED on behalf of Rusty Super )  
Pty Ltd (ACN 125 536 941) in its )  
capacity as Trustee in accordance with )  
the requirements under section 127 of the )  
Corporations Act 2001:

x *RJ Ravenscroft*  
Signature of Director

Russell John Ravenscroft

\_\_\_\_\_  
Name of Director

## SCHEDULE A

<b>DATE OF DEED:</b>	X 25 May 2007
<b>PRINCIPAL</b>	Russell John Ravenscroft
<b>TRUSTEE:</b>	Rusty Super Pty Ltd (ACN 125 536 941)
<b>NAME OF FUND:</b>	Rusty Superannuation Fund
<b>INITIAL MEMBERS:</b>	Russell John Ravenscroft
<b>PROPER LAW GOVERNING FUND:</b>	The Law of the State of Queensland

## SCHEDULE B

## Rusty Superannuation Fund (FUND)

### APPLICATION FOR MEMBERSHIP

TO: THE TRUSTEE OF THE FUND

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#### 1. AGREEMENT AND UNDERTAKING

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 in an Employment Relationship with 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 enter into an Employment Relationship with 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 the terms and conditions of Division B of the Deed concerning Benefits payable;
- (f) I have read and understand the prescribed information relating to the collection of Tax File Numbers by trustees of superannuation funds and attach a completed Australian Taxation Office Individual Tax File Number Notification Form; and
- (g) 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)

