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**THORP INVESTMENTS AUSTRALIA PTY LTD
ACN 661 075 056**

(Trustee)

**DEED ESTABLISHING
THORP SUPERANNUATION FUND**

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THIS DEED is made on

25 JULY

2022

BY

THORP INVESTMENTS AUSTRALIA PTY LTD ACN 661 075 056 c/- 12-18 Hudson Road
Mawson Lakes SA 5095 (Trustee)

INTRODUCTION

- A. The Trustee wishes to establish a superannuation fund for the purpose of funding superannuation benefits for the fund's beneficiaries and for such incidental and ancillary purposes as may be authorised by the Relevant Law from time to time.
- B. The Trustee has agreed to act as the first trustee of the Fund and be bound by this Deed.

TERMS

The Trustee declares the terms of this Deed as follows:

1. THE FUND

1.1 Name of Fund

The name of the Fund shall be **THORP SUPERANNUATION FUND**.

1.2 Establishment

The Fund shall be established as and from the date this Deed is executed.

1.3 The Trustee

The Trustee shall be a sole trustee which is a constitutional corporation within the meaning of the Relevant Law or the Trustee shall be comprised of individuals in which case the primary purpose of the Fund shall be to provide old age pensions for the Members upon their retirement and for any other purposes which may be permitted under the Relevant Law from time to time.

1.4 Self Managed Superannuation Fund

The Trustee shall do all such things as may be necessary to establish and maintain the Fund as a Self Managed Superannuation Fund that is not a public offer fund (within the meaning of the Relevant Law).

2. DICTIONARY

Unless the context otherwise requires, in this Deed:

annuity means an annuity within the meaning of the Relevant Law;

Auditor means an approved auditor within the meaning of the Relevant Law being the auditor appointed by the Trustee from time to time;

Benefit in relation to a Member is a reference to a Member's interest in the Fund whether a benefit payable or able to be paid by the Trustee or a benefit to which the Member may become entitled in the future whether payable or to be payable from the Fund as a lump sum, pension, annuity or other style of benefit authorised to be paid by the Relevant Law;

clause means a clause of this Deed;

Condition of Release means in relation to a Member any condition of release within the meaning of the Relevant Law as it applies to Regulated Superannuation Funds from time to time;

Contributions means contributions to the Fund by or in respect of a Member in accordance with clause 11.1;

Current Pension Liabilities means current pension liabilities within the meaning of the income tax legislation and is a reference to the liabilities that have been assumed by the Trustee to pay pensions;

this Deed means these presents and any authorised alterations amendments and modifications thereto;

Dependant in relation to a Member means a dependant within the meaning of the Relevant Law and where there are multiple definitions of dependant the definition most suited to the context in which the term is used shall apply;

Eligible Contributor means any person or entity who or which is eligible to make superannuation contributions in respect of a Member in accordance with the Relevant Law;

Eligible Person means any person who is eligible to become a member of a Regulated Superannuation Fund under the Relevant Law;

Eligible Spouse means a person who is the spouse in relation to a Member in accordance with the Relevant Law;

Fund means the trust fund constituted by this Deed;

Fund Account is a reference to any account maintained in relation to the Fund by the Trustee including Member Accounts and the General Reserve;

Fund Year means the period of 12 months ending on 30 June in each year or such other period as the Trustee may determine to be applicable from time to time;

General Reserve is a reference to the Fund Account which may be maintained by the Trustee in accordance with clause 8.3;

legal personal representative means the executor of the Will or the administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability, or a person who holds an enduring power of attorney granted by a person, or any such other person or entity who may qualify as a legal personal representative within the meaning of the Relevant Law from time to time but not including a trustee in bankruptcy for a person;

Member/s means a person who has been admitted to membership pursuant to clause 10, a pensioner or any person who is entitled to a Benefit under the Fund and shall include, in relation to a Member suffering from legal incapacity, that Member's legal personal representatives or one of them as the Relevant Law may permit;

Member Account means in respect of a Member a Fund Account established and maintained pursuant to clause 8.1;

non-member spouse means the spouse in relation to a Member who has become subject to a payment split. A non-member spouse may or may not be a Member but

for the purposes of a payment split the non-member spouse shall be deemed not to be a Member and the interest of the non-member spouse in the payment split and the said Member's Benefit shall be determined in accordance with this Deed subject to the requirements of the Relevant Law;

payment split means a payment split within the meaning of the Relevant Law;

pension is a reference to a contractual obligation on the part of the Trustee to make regular payments to a pensioner that is deemed by the Relevant Law to be a pension;

pensioner means a primary pensioner or reversionary pensioner who is currently entitled to a pension;

person includes any natural person, trustee, partnership or company;

primary pensioner means the person first becoming entitled to be paid a pension in accordance with clause 12.4 whether or not the person has previously been a Member;

Regulated Superannuation Fund means a superannuation fund which is a regulated superannuation fund within the meaning of the Relevant Law;

Relevant Law means the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Income Tax Regulations*, the *Taxation Administration Act 1953* and any other statute regulation or law (including the common law / trust law) relating or applicable to Regulated Superannuation Funds within the meaning of the above legislation or laws;

residual capital value in relation to a pension means a capital amount payable on the termination of the pension as a term and condition attaching to the pension contract as between the Trustee and the pensioner;

Responsible Authority means any one or more of the Australian Prudential Regulation Authority, Australian Taxation Office (including the Commissioner of Taxation), Australian Securities and Investments Commission or any other governmental authority responsible for administering the laws, regulations or any other rules governing the operation of Regulated Superannuation Funds;

reversionary pensioner means a Dependant in relation to a primary pensioner who becomes entitled to a pension under the Fund in succession to the primary pensioner;

Self Managed Superannuation Fund means a self managed superannuation fund within the meaning of the Relevant Law;

Superannuation Entity means any regulated superannuation fund, approved deposit fund, exempt public sector superannuation scheme or retirement savings account within the meaning of the Relevant Law;

Tax includes income tax, land tax, stamp duty and any other tax impost or duty;

Trustee means the Trustee for the time being of the Fund whether original or substituted and in instances where there is more than one Trustee the expression "Trustee", where it appears in this Deed, shall mean all the trustees.

Expressions defined elsewhere in this Deed have that meaning.

3. INTERPRETATION

3.1 Defined Words

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

3.2 Severance and Reading Down

3.2.1 If any provision of this Deed or any part thereof is void or invalid under the Relevant Law then such provision or part thereof shall be valid, binding and enforceable to the full extent permitted by the Relevant Law and shall be read down and severed accordingly.

3.2.2 Each provision of this Deed shall be construed as a separate and severable provision so that if any such provision is severed in accordance with clause 3.2.1 the remainder of the Deed shall be read and construed as if the severed provision had not been contained in the Deed notwithstanding any consequential alteration to the meaning or construction of that provision that may result from the severance.

3.3 Governing Law

This Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of principal residence or registered office (as the case may be) of the Trustee. The Trustee shall accept the jurisdiction of the Courts of that State or Territory provided that, if this Deed or any rights of any person hereunder shall lawfully be affected by any law custom or practice of the Commonwealth of Australia or of any other State or Territory, then this Deed shall have effect subject to that law custom or practice and the Trustee shall be empowered to determine and to adjust the rights, Contributions and Benefits to and in respect of that person to the extent necessary to comply therewith.

4. THE TRUSTEE

4.1 Number of Trustees

4.1.1 Where the Trustee is comprised of natural persons there may be one or more of such persons appointed to the office of Trustee subject to the requirements of the Relevant Law and clause 4.2.4.

4.1.2 Where the Trustee is a corporation the Trustee shall be a sole Trustee which is a constitutional corporation within the meaning of the Relevant Law and shall be constituted in accordance with clause 4.2.4.

4.1.3 Notwithstanding that there may be more than one Trustee upon the establishment of the Fund a sole Trustee as provided for by this clause 4.1 may be subsequently appointed and such appointment shall be an effective discharge of any outgoing Trustee.

4.2 Appointment and Removal of Trustee

4.2.1 (a) The Members shall have the right to appoint and remove any Trustee whether by deed or by written resolution and any person or entity appointed as a Trustee shall consent in writing to their appointment as required by the Relevant Law.

- (b) If the Member suffers from legal incapacity then a person holding an enduring power of attorney for the Member may exercise the Member's powers in accordance with this clause 4.2.

4.2.2 A Trustee shall cease to be a Trustee if the Trustee:

- (a) resigns the office by notice in writing to the Members; or
- (b) being a natural person, dies; or
- (c) being a natural person, becomes incapable of performing the person's duties hereunder; or
- (d) being a corporation enters into liquidation or a receiver or receiver and manager of the property of the Trustee is appointed; or
- (e) is removed from office by the Members pursuant to the provisions of clause 4.2.1; or
- (f) otherwise becomes a disqualified person within the meaning of the Relevant Law.

4.2.3 In the event of a vacancy in the office of Trustee a new Trustee may be appointed in accordance with clause 4.2.1 within such time as may be prescribed by the Relevant Law.

4.2.4 In the event the Relevant Law prescribes standards in relation to members of Self Managed Superannuation Funds being required to be trustees or directors of the trustee the Trustee shall be constituted in accordance with and adhere to such standards and to the extent of any inconsistency between this Deed and those standards those standards shall apply.

4.2.5 Subject to the requirements of the Relevant Law and clause 4.2.6:

- (a) upon the death of a Member, the legal personal representative of the Member may take the place of the Member as a Trustee or as a director of the Trustee for such period as authorised by the Relevant Law;
- (b) any legal personal representative of a Member may be appointed as a Trustee or director of the Trustee in substitution for the Member during any period when the Member is under a legal disability;
- (c) any person may be appointed as a Trustee or director of the Trustee in substitution for the Member subject to such person holding an enduring power of attorney from the Member;
- (d) where a Member is a minor then a parent or guardian of the Member may be appointed as a Trustee or director of the Trustee in the place of the minor.

4.2.6 The appointment of a person as a Trustee or as a director of the Trustee in accordance with clause 4.2.5 shall take effect as follows:

- (a) in the case of the appointment of a person as a Trustee the appointment shall be effected by a deed or a written agreement between the person and the other persons constituting the Trustee;
- (b) in the case of the appointment of a person as a director of the Trustee the appointment shall be effected in accordance with the requirements of the constitution of the Trustee;
- (c) any one or more persons may be appointed as a Trustee or as a director of the Trustee in accordance with clause 4.2.5.

4.3 Decisions of the Trustee

Where there is more than one person appointed as the Trustee those persons must act jointly in any decision. Where there is a corporation appointed as the Trustee, any decision of the Trustee shall be made in accordance with that corporation's constituent documents.

4.4 Fund Vested in Trustee

The Fund shall be vested in the Trustee and managed by the Trustee upon the terms and conditions of this Deed and no Member shall have a beneficial interest in any property of the Fund except that if clause 8.2.2(f) applies then the Member shall have an interest in the Fund evidenced by the segregation of the asset or assets by the Trustee in favour of the Member.

4.5 Powers of Trustee

In addition to the powers which the Trustee has at law and which are otherwise granted to the Trustee by this Deed the Trustee shall have the following powers:

- 4.5.1 to enter into and execute all contracts, deeds and documents and do all acts, matters or things which the Trustee may deem expedient for the purpose of securing the benefits to be provided by or from the Fund and for otherwise giving effect to the authorities, powers and discretions conferred on the Trustee by this Deed;
- 4.5.2 to purchase or otherwise acquire and to sell or otherwise dispose of property of the Fund and to take property on lease for the purposes of the Fund and to lease out any property of the Fund on such terms and conditions as the Trustee thinks fit;
- 4.5.3 to appoint such persons or entities as the Trustee considers appropriate from time to time to provide services in connection with the management and administration of the Fund and to appoint such persons or entities for permanent, temporary or special purposes as appropriate;
- 4.5.4 to insure or reinsure any risks, contingencies or liabilities of the Fund, the Trustee and/or the Members and their Dependants;
- 4.5.5 to institute, conduct, defend, compound or abandon any legal proceedings concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;

- 4.5.6 to make and give receipts and releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- 4.5.7 to open any accounts for the deposit of Fund money with any financial institution (whether a bank or otherwise) and to retain on current or deposit account such money as the Trustee considers proper and to make rules for the operation of such accounts including the signing and endorsing of cheques in connection therewith;
- 4.5.8 to lend or advance moneys whether secured by mortgage or on such other terms and conditions as the Trustee may determine;
- 4.5.9 to pay Fund expenses out of such Fund Accounts as the Trustee may determine in accordance with clause 11.2;
- 4.5.10 to borrow as provided for by clause 9.4 or as the Trustee may otherwise determine;
- 4.5.11 to determine who shall be entitled to sign on the Fund's behalf; receipts, acceptances, endorsements, releases, contracts and documents;
- 4.5.12 to pay Benefits out of the Fund to persons entitled thereto;
- 4.5.13 in the case of the mental or physical incapacity of a Member to pay or apply the Benefit or any part thereof at the Trustee's discretion to or for the benefit of the Member, any legal personal representative of the Member or any Dependants of the Member in accordance with the provisions of this Deed;
- 4.5.14 to effect a policy of insurance including insurance contemplated under clause 8.9;
- 4.5.15 to take and act upon the advice and opinion of any legal practitioner whether in relation to interpretation of this Deed or any other document or statute or as to the administration of the trusts hereof or upon the advice or opinion of any medical practitioner or any investment or financial adviser or any other professional person without being liable to any Member or Dependant or any legal personal representative of any of them in respect of any act done by them in accordance with such advice or opinion;
- 4.5.16 to make an election that the Fund be a Regulated Superannuation Fund and to make any other elections as may be required to be made under the Relevant Law;
- 4.5.17 to request provision of a Member's Tax File Number;
- 4.5.18 to determine not to accept Contributions for whatever reason, in respect of a Member where, in the opinion of the Trustee, the receipt of such contributions would be contrary to the Relevant Law;
- 4.5.19 to refund any amount paid to the Trustee (including any amount purported to be a Contribution) in respect of a Member where such payment has been receipted in error and in that event the Trustee shall be deemed to have only ever held such payment on constructive and separate trusts for the payer and not as an accretion to the Fund or in any other circumstances permitted by the Relevant Law;

- 4.5.20 to record and report to the Australian Taxation Office amounts by way of transfer balance debits and credits in respect of a Member's transfer balance account as required by the Relevant Law;
- 4.5.21 to recognise and take such action as the Trustee considers appropriate with respect to any excess transfer balance determination issued in respect of a Member in accordance with the Relevant Law;
- 4.5.22 generally to exercise or concur in exercising all the powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or a relative of a Trustee or a director or shareholder of a Trustee or a relative of a director or shareholder of a Trustee hereof has or may have a direct or indirect personal interest (whether in his/her personal capacity or as trustee of any other settlement or as a director or shareholder or member or partner of any company or partnership or as a unitholder in any unit trust or as a beneficiary of any discretionary trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion;
- 4.5.23 to delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred by this Deed or otherwise by law on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose;
- 4.5.24 to give indemnities to or on behalf of any person the Trustee thinks fit;
- 4.5.25 to do any act, matter or thing that the Relevant Law authorises or permits the Trustee to do notwithstanding any inconsistent provision or the absence of a specific power in this Deed;

provided however that the Trustee in the exercise of any power hereby granted shall have regard to and conform with any standard prescribed by the Relevant Law.

4.6 Delegation

The Trustee may from time to time delegate to any person including any individual Trustee or director of the Trustee as the case may be such powers, discretions and authorities relating to the management and administration of the Fund as the Trustee may think fit. The Trustee shall have the power to remove any delegate appointed in accordance with this clause 4.6 at any time.

4.7 Liability of Trustee

- 4.7.1 Subject to clause 4.7.3 a Trustee shall not incur any personal liability for anything done or omitted to be done by the Trustee as trustee except in respect of any fraud or wilful misconduct on the part of such Trustee.
- 4.7.2 A Trustee shall not in any circumstance be entitled to indemnity, reimbursement or recompense from any Member and no Member shall be liable for the debts or other obligations of the Fund except in the case of an express personal guarantee that might be given by a Member in connection with a borrowing by, or other liability of, the Trustee subject to such guarantee not breaching this Deed or the Relevant Law.

- 4.7.3 The Trustee may not be exempted from liability under clause 4.7.1 if to be so exempted would be contrary to the Relevant Law.

4.8 Indemnity

- 4.8.1 The Trustee shall be entitled to be indemnified out of the assets of the Fund which indemnity shall apply as against liabilities incurred by the Trustee in consequence of the exercise by it of its powers, authorities and discretions under this Deed and at law generally except that the Trustee may not be indemnified where that would be contrary to the Relevant Law.
- 4.8.2 A reference to "the Trustee" in clause 4.8.1 shall be interpreted as including a reference to any person who may be a director of the Trustee.
- 4.8.3 No beneficiary of the Fund including a Member shall be liable to indemnify contribute to or reimburse the Trustee or a director of the Trustee or any creditor of the Trustee or any other person claiming against or through the Trustee notwithstanding any rule of law or equity to the contrary and the liability of any such beneficiary shall be limited to that beneficiary's interest (if any) in the Fund.

4.9 Custodian Trustee/Nominee

The Trustee shall have the power to appoint, on such terms as it considers appropriate (including the giving of indemnities), a custodian or nominee for the purpose of holding the legal title to one or more Fund assets.

4.10 Trustee Remuneration

No Trustee or any director of the Trustee, where the Trustee is a company, shall be entitled to receive any remuneration from the Fund or from any person (including a body corporate) for any duties or services performed by the Trustee/director of the Trustee, as the case may be, in relation to the Fund unless such remuneration is not contrary to the Relevant Law.

4.11 No Obligation to Disclose

Subject to the Relevant Law, the Trustee is not bound to disclose to a Member or other interested person any information or document relating to any decision, act or omission of the Trustee that touches, concerns or reveals:

- 4.11.1 any deliberations or processes of deliberations of the Trustee;
- 4.11.2 any matters considered by the Trustee in making any determination;
- 4.11.3 any reasons for any decisions, act or omission of the Trustee.

Nothing in this clause 4.11 affects any right of the Trustee under law to refuse to disclose information or documents.

5. MEETINGS

The Members, the Trustee or directors of the Trustee may transact business or attend to their respective rights, duties and obligations arising in accordance with this Deed and the Relevant Law by such means as they consider appropriate and for the purpose

of effectuating such matters may convene meetings and pass resolutions to evidence their respective decisions.

6. SERVICE PROVIDERS

The Trustee may appoint such service providers as it considers necessary for the administration of the Fund subject to the requirements of the Relevant Law and the Trustee may pay and indemnify itself out of the Fund for all the fees and charges of such service providers.

7. FINANCIAL STATEMENTS AND INFORMATION TO MEMBERS

7.1 Financial Statements

The Trustee shall cause financial statements to be prepared for the Fund in accordance with standard accounting practice and the requirements of the Relevant Law.

7.2 Audit

The Trustee shall appoint an Auditor to undertake audits of the Fund in accordance with the requirements of the Relevant Law.

7.3 Information for Members

The Trustee shall provide such information about the Fund to the Members as it considers appropriate but otherwise shall only be required to provide information in accordance with the requirements of the Relevant Law.

8. ACCOUNTS

8.1 Member Accounts

The Trustee shall establish and maintain one or more Member Accounts in respect of each Member and the Trustee shall credit and debit amounts to each account as provided for by this Deed and as it may otherwise determine.

8.2 Separate Accounts and Segregation

8.2.1 The Trustee shall maintain an accumulation and / or one or more pension accounts in respect of each Member.

8.2.2 The Trustee may maintain separate accounts within each Member's Member Account on such basis as it may consider appropriate including for the purposes of:

- (a) differentiating between benefits funded by the Member and an Eligible Contributor;
- (b) differentiating between preserved and non-preserved benefits within the meaning of the Relevant Law;
- (c) identifying minimum benefits within the meaning of the Relevant Law;
- (d) identifying those assets or amounts in respect of the Member which are funding Current Pension Liabilities;

- (e) enabling more than one pension to be arranged in respect of a Member;
 - (f) creating an interest in the Fund in favour of the Member which may be evidenced by the Trustee setting aside assets or fractions of assets as being referable to any one or more Members and so as to evidence the interest of such Member or Members in the Fund.
- 8.2.3 If the Trustee is in receipt of an in specie contribution in respect of a Member in accordance with clause 11.1.1(g) then the relevant asset or assets may be segregated in favour of the Member.
- 8.2.4 If the Trustee commences to pay a pension:
- (a) the amount applied to the pension shall be credited to a pension account for the Member;
 - (b) the Trustee may segregate assets of the Fund for the purpose of such assets supporting the Fund's Current Pension Liability referable to the pension;
 - (c) the Trustee shall ensure that the amount applied to fund the pension is equivalent to the value of the assets which are segregated and the Trustee may determine to desegregate assets which have been segregated subject to segregating non-segregated assets of equivalent value;
 - (d) where a pension has been commenced the Trustee may determine in its discretion to commence or cease (as the case may be) the segregation of assets provided that is authorised by the Relevant Law.

8.3 General Reserve

- 8.3.1 The Trustee may maintain an account to be known as the General Reserve which may be credited with any of the following amounts:
- (a) any amount forfeited pursuant to clause 12.8 or any amount arising in accordance with clause 12.4.10; or
 - (b) any amount allocated in accordance with clause 8.9.3 or allocated out of the amount to be appropriated in accordance with clause 8.5.1 from time to time.
- 8.3.2 In determining to allocate an amount to be appropriated in accordance with clause 8.5.1 as provided for by clause 8.3.1(b) the Trustee may allocate for whatever purposes it considers appropriate subject to the requirements of the Relevant Law which purposes may include reducing any volatility in the earnings rate of the Fund from time to time.
- 8.3.3 The Trustee may draw on the amount standing to the credit of the General Reserve from time to time for such purposes as the Trustee considers appropriate including for the following purposes:
- (a) crediting amounts to one or more of the Members' Member Accounts;

- (b) paying Fund expenses in accordance with clause 11.2;
- (c) paying premiums on any insurance policy which is not held in connection with a Member Account as provided for by clause 8.9;
- (d) funding a Benefit in accordance with clause 12.4.9 on what might be described as a self insurance basis.

8.3.4 The Trustee may in addition to maintaining a General Reserve in accordance with this clause 8.3 determine to maintain any other style of Fund reserve or account as it considers appropriate from time to time but subject to the requirements of the Relevant Law.

8.4 General Reserve Strategy

In addition to the Trustee's obligation to maintain an investment strategy for the Fund in accordance with clause 9.2.1 if there is at any time an amount standing to the credit of the General Reserve then the Trustee shall formulate and give effect to a strategy for the prudential management of the General Reserve which shall be consistent with the strategy adopted for the purposes of clause 9.2.1 and which shall address the Trustee's capacity to discharge its liabilities on account of the Fund as and when such liabilities arise.

8.5 Allocation of Earnings

- 8.5.1 At the end of each Fund Year the Trustee shall credit or debit, as the case may be, an amount to each Member's Member Account and the General Reserve (if applicable) on account of the Fund's net earnings (including unrealised gains or losses) in respect of the Fund Year.
- 8.5.2 All allocations between the Members pursuant to this clause 8.5 shall be on a fair and equitable basis in accordance with the Relevant Law and if the Trustee has segregated assets in accordance with clause 8.2.3 (or any other provision of this Deed) the Fund's earnings referable to those assets shall be allocated to the relevant Member's Member Account.
- 8.5.3 If a Member's Benefit becomes payable in whole or in part at any time the Trustee shall credit or debit, as the case may be, an amount to the Member's Member Account in respect of the period from the end of the most recent Fund Year to the date of payment of the Benefit as if the date of payment of the Benefit was the end of a Fund Year for the purposes of clause 8.5.1.

8.6 Revaluations/Solvency

The assets of the Fund shall be revalued by the Trustee at the end of each Fund Year or at such other times as the Trustee may consider appropriate and on such basis as the Trustee determines provided that the timing and basis of such revaluation is in accordance with the Relevant Law and provided further that revaluations are undertaken and amounts are debited or credited to the Members' Member Accounts and the General Reserve as may be required to ensure the Fund remains solvent in accordance with the Relevant Law.

8.7 Tax

If the Trustee becomes liable for Tax in respect of Contributions, earnings or other accretions to the Fund the Trustee may deduct the amount of Tax assessed out of the income of the Fund and if the income of the Fund from time to time is insufficient to make payment of the amount assessed the Trustee may debit the Members' Member Accounts on whatever basis the Trustee considers to be fair and reasonable so as to satisfy such Tax liability.

8.8 Payment Split

If a Member becomes subject to a payment split then:

- 8.8.1 the Trustee shall issue such notices to the Member and non-member spouse as may be required by the Relevant Law;
- 8.8.2 the Trustee shall determine the payment split amount to be debited against the Member's Member Account and to be credited in favour of the non-member spouse;
- 8.8.3 the non-member spouse may request that the Trustee credit the payment split amount to a Member Account in respect of the non-member spouse either on account of the non-member spouse already being a Member or on account of the non-member spouse applying to become a Member;
- 8.8.4 the Trustee shall not be bound by a non-member spouse's request in accordance with clause 8.8.3 and may determine to roll over or transfer the payment split amount to another Superannuation Entity nominated by the non-member spouse or otherwise may transfer the amount to an eligible rollover fund within the meaning of the Relevant Law;
- 8.8.5 if the non-member spouse or the Member requests that the Trustee rollover or transfer the payment split amount to another Superannuation Entity then the Trustee shall be bound and act on such request;
- 8.8.6 if the non-member spouse is not a Member or is not admitted as a Member but:
 - (a) the non-member spouse satisfies a Condition of Release;
 - (b) a pension is being paid to the Member in relation to the non-member spouse in accordance with clause 12.4; or
 - (c) the payment split amount is derived entirely from a non-restricted non-preserved benefit (within the meaning of the Relevant Law) of the applicable Member;

then the non-member spouse may request that some or all of the payment split amount be paid as a lump sum and the Trustee may pay a lump sum benefit in accordance with that request.

8.9 Insurance

- 8.9.1 The Trustee shall have the power to effect a policy of life or other like insurance which insurance may be held:

- (a) in connection with and as part of a Member's Member Account;
or
- (b) in suspense and not in connection with any Member's Member Account,

subject to the requirements of the Relevant Law.

8.9.2 Premiums in respect of any insurance policy held in accordance with clause 8.9.1(a) may only be funded out of the Member's Member Account and any proceeds received by the Trustee with respect to such policy shall be credited to the Member's Member Account.

8.9.3 Premiums in respect of any insurance policy held in accordance with clause 8.9.1(b) may only be funded out of the General Reserve and any proceeds received by the Trustee with respect to such policy shall be held for allocation by the Trustee as the Trustee sees fit including for the following purposes:

- (a) crediting an amount to one or more Member Accounts;
- (b) crediting an amount to the General Reserve;
- (c) funding a Benefit payable in accordance with clause 12.4.9.

9. INVESTMENTS

9.1 The Assets

The following property and the property from time to time representing the same together with the referable earnings shall constitute the assets of the Fund, namely:

- 9.1.1 Contributions;
- 9.1.2 any moneys or property transferred to the Fund in respect of a Member in accordance with clause 10.3; and
- 9.1.3 any other moneys or property received or receivable by the Trustee for the purposes of the Fund.

9.2 Investment Strategy

9.2.1 Subject to the requirements of the Relevant Law the Trustee shall formulate and give effect to a written investment strategy having regard to the whole of the circumstances of the Fund including but not limited to:

- (a) the risk involved in making, holding and realising and the likely returns of the Fund's investments having regard to its objectives and expected cash flow requirements;
- (b) the composition of the Fund's investments including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments having regard to its expected cash flow requirements;

- (d) the ability of the Fund to discharge its existing and prospective liabilities; and
- (e) whether the Trustee should hold a contract of insurance that provides insurance cover for one or more Members.

9.2.2 If the Trustee invests in what are known as derivative investments the Trustee shall review the Fund's investment strategy and consider the need for a risk management statement to be formulated and given effect to in accordance with the Relevant Law.

9.3 Investments Authorised

The Trustee shall invest the assets of the Fund from time to time in any investment which the Trustee could make acting personally and not as the Trustee subject to the Trustee's written investment strategy adopted in accordance with clause 9.2 and subject further to the investment standards imposed by the Relevant Law and in doing so the Trustee shall ensure that the money and assets of the Fund are held separately from any money or assets held by the Trustee personally or by a standard employer sponsor or an associate of a standard employer sponsor of the Fund.

9.4 Borrowing

The Trustee may borrow or raise money (including on the basis of what is known as a limited recourse borrowing arrangement pursuant to which a nominee holds the legal title to an asset in connection with a limited recourse borrowing of the Trustee) up to such amount as the Trustee thinks proper and may secure the payment or repayment thereof by charge or mortgage over all or any of the assets of the Fund or in such other manner as it shall think fit subject to the requirements of the Relevant Law.

10. ENTRANCE TO FUND

10.1 Eligibility

Membership of the Fund is confined to Eligible Persons at the discretion of the Trustee.

10.2 Admission of Members

The Trustee may determine the basis on which an Eligible Person is to be admitted to membership of the Fund and the Trustee may require such an Eligible Person to complete an application for membership in such form as it may determine and the Eligible Person shall become a Member upon being admitted to membership by the Trustee. The Trustee may require the Eligible Person to provide their Tax File Number as a precondition to being admitted as a Member.

10.3 Transfer from Another Fund

The Trustee may make arrangements with the trustee of any Superannuation Entity of which the Member is a member for the transfer of any assets or moneys to the Fund in respect of the Member which assets or moneys shall be credited to the Member's Member Account provided that if any of the said assets or moneys have been required to be preserved in accordance with the requirements of the Relevant Law the Trustee shall preserve those assets or moneys in like manner.

10.4 Member Bound by Deed

Notwithstanding that a Member may have failed to make any declaration upon or in conjunction with becoming a Member a Member shall by virtue of becoming a Member be deemed to have agreed to be bound by this Deed.

10.5 Nomination of Beneficiary

The Trustee may require the Member to complete a death benefit nomination or some other like nomination which requires the Member to nominate the person or persons who may benefit in the event of the Member's death. Notwithstanding this clause 10.5, the Member may at any time make a death benefit nomination pursuant to clause 12.5.

11. CONTRIBUTIONS AND EXPENSES

11.1 Contributions

11.1.1 The Trustee may accept Contributions in respect of a Member as authorised by the Relevant Law including, but not limited to:

- (a) Member Contributions;
- (b) Eligible Contributor Contributions;
- (c) Eligible Spouse Contributions;
- (d) Contributions in accordance with the *Superannuation Guarantee (Administration) Act 1992*;
- (e) Government co-contributions;
- (f) Contributions in connection with structured settlements and orders for personal injury, certain non assessable capital gains and downsizer contributions;
- (g) any Contribution in respect of a Member by way of a transfer of an asset in specie which Contribution shall be credited to the Member's Member Account in accordance with clauses 8.1 and 8.2.

11.1.2 Notwithstanding any other provision of this Deed the Trustee shall not accept:

- (a) a Contribution by or in respect of a Member unless the Contribution is authorised by the Relevant Law;
- (b) a Contribution by or in respect of a Member that would, if receipted as a Contribution, result in what is known as the non-concessional contributions cap in respect of the Member being exceeded and in addition the Trustee shall in its absolute discretion have the ability not to accept any other category of Contribution other than what is known as a mandated employer contribution.

11.1.3 The Trustee may hold any Contribution by or in respect of a Member in accordance with this clause 11.1 in suspense on a temporary basis as it may determine in its absolute discretion except that any such

Contribution held in suspense shall be allocated to the Member's Member Account in accordance with clause 8.1 within such time frame as may be prescribed by the Relevant Law.

11.2 Fund Expenses

The Trustee shall pay out of the Fund all costs, expenses, disbursements, commissions, fees, taxes, management charges and other proper outgoings incurred in the gaining or production of the Fund income and in connection with the administration of the Fund. The Trustee may charge expenses of the Fund against one or more Fund Accounts including Member Accounts and the General Reserve (if applicable) subject to the Trustee being satisfied that the charging of the Fund's expenses and outgoings is fair and equitable as between the Members and subject further to the requirements of the Relevant Law.

11.3 Contribution Splitting

11.3.1 The Trustee may effect the splitting of Contributions made by or in respect of a Member by way of rollover, transfer or allotment in favour of the Member's spouse upon application from the Member in the prescribed form.

11.3.2 Where a Contribution split is effected by way of rollover or transfer the amount shall be applied in accordance with clause 13.2.

11.3.3 Where a Contribution split is effected by way of allotment the split amount shall be debited from the Member's Member Account and credited to the Member Account of the Member's spouse.

11.4 Allocation to Accumulation Account

All contributions in respect of a Member shall be allocated to the Member's accumulation account within the period required by the Relevant Law.

12. BENEFITS

12.1 Satisfaction of Condition of Release

Upon a Member satisfying a Condition of Release (or as otherwise allowed by the Relevant Law) the Member's Benefit may become payable in whole or in part subject to:

12.1.1 an agreement between the Trustee and the Member (in the case of a Member's legal incapacity, any person/s holding an enduring power of attorney for the Member) to pay the Member's Benefit;

12.1.2 the terms (if any) of any court order;

12.1.3 the terms (if any) of a payment flag within the meaning of the *Family Law Act 1975 (Cth)*; and

12.1.4 the requirements of the Relevant Law.

12.2 Calculation and Payment of Benefit

Subject to clause 12.1 the amount of the Member's Benefit shall be calculated as an amount not exceeding the amount standing to the credit of the Member's

Member Account at the time the Benefit is paid or applied for the Member's benefit and the Trustee may:

- 12.2.1 pay the Benefit to the Member in a lump sum;
- 12.2.2 apply the Benefit or segregate assets equivalent in value to the Member's Benefit in accordance with clause 8.2.4 for the purposes of paying a pension for the benefit of the Member in accordance with clause 12.4; or
- 12.2.3 apply the Benefit to the acquisition of an annuity.

12.3 Benefits Payable by Lump Sum

The payment of a Benefit as a lump sum pursuant to clauses 12.2.1 and 12.6 shall be made by the Trustee as soon as reasonably practicable after the Benefit has become payable.

12.4 Benefits Payable by Pension

The payment of a Benefit as a pension pursuant to clauses 12.2.2 and 12.6 may be paid in accordance with this clause 12.4 or as otherwise authorised by the Relevant Law as follows:

12.4.1 Account Based Pension

A pension may be commenced for a Member as an account based pension and which shall have the following features as authorised by the Relevant Law:

- (a) pension payments shall be made at least annually except that where the date of commencement of the pension is after 1 June no payment is required in respect of that Fund Year;
- (b) the total of pension payments in any Fund Year (including under a payment split) shall be at least the amount calculated in accordance with the Relevant Law;
- (c) there shall be no maximum pension payable subject to clause 12.4.8;
- (d) the pension shall only be transferable on the death of the primary pensioner to a reversionary pensioner or pensioners who are Dependant/s of the pensioner at the time of death subject to the terms of any pension contract;
- (e) the capital value of the pension and the income from it cannot be used as security for a borrowing;
- (f) the pension may be commuted (subject to clause 12.4.8) in whole or in part by payment of one or more lump sums or by way of internal commutation to be held as a Member's accumulation;
- (g) the pension may have a residual capital value subject to the requirements of the Relevant Law.

12.4.2 Annuity or Other Style of Pension

Where the Relevant Law authorises an annuity or other style of pension to be paid the Trustee shall have the power to pay or purchase any such style of pension or annuity the terms and conditions of which shall be determined in accordance with the pension contract which contract may include terms in relation to matters such as commutation, minimum and maximum pension payments, whether the pension may be paid as a reversionary pension and the ability to pay a residual capital value in respect of the pension.

12.4.3 Conversion of Allocated Pension to Account Based Pension

If the Trustee is or has been paying an allocated pension then subject to the terms of the pension contract the Trustee may determine to continue paying that pension as an account based pension in accordance with clause 12.4.1 without effecting a commutation of the allocated pension.

12.4.4 Commutation of Other Styles of Pension

If the Trustee has been paying a pension other than an account based pension then subject to the terms of the pension contract and the requirements of the Relevant Law the Trustee may commute such pension in whole or in part to another style of pension, whether an account based pension or any other style of pension.

12.4.5 Pension Contract

Upon the commencement of any pension in accordance with this clause 12.4 the Trustee may prescribe rules and conditions applicable to the pension (**pension contract**) which may be confirmed in writing as between the Trustee and Member.

12.4.6 One or More Pensions

The Trustee may commence more than one pension in respect of a Member whether at the same time or different times and each such pension shall be arranged and paid just as if it were the only pension to be paid from the Fund in respect of the Member.

12.4.7 Pensions Payable to Minors

A minor may be a Member of the Fund as permitted by the Relevant Law and may become entitled to a pension or otherwise be admitted as a Member subject to the requirements of the Relevant Law and to the provisions of this Deed.

12.4.8 Pension on Attainment of Preservation Age

The Trustee may commence a pension for a Member who has attained their preservation age within the meaning of the Relevant Law on such terms and conditions as the Trustee and the Member may agree subject to the requirements of the Relevant Law.

12.4.9 Temporary Incapacity / Salary Continuance

- (a) If a Member suffers from temporary incapacity within the meaning of the Relevant Law then the Trustee may pay a non-commutable income stream in respect of the Member for the purpose of continuing, in whole or in part, the gain or reward from employment which the Member was receiving before the temporary incapacity which payment shall only be paid in respect of the period of temporary incapacity.
- (b) The Trustee shall have the power to effect a policy of temporary incapacity insurance (or other like policy) for the purpose of funding payments under clause 12.4.9(a) but otherwise may fund payments under clause 12.4.9(a) out of the Member's Member Account or in accordance with the provision made for that by clause 8.9.3 subject to the requirements of the Relevant Law governing minimum benefits and any requirement that temporary incapacity benefits not be funded out of member financed benefits or mandated employer financed benefits.
- (c) If the Trustee holds a policy of temporary incapacity insurance (or other like insurance) for a Member then the Trustee may assign the legal and beneficial interest in the said policy to the Member subject to such assignment being authorised by the Relevant Law.

12.4.10 Pension Reserve

- (a) If the Fund pays a defined benefit pension and the pension terminates (whether on account of the death of the pensioner or otherwise) the Trustee may retain within the Member's Member Account (notwithstanding actuarial practice) the full balance and related assets corresponding to the Current Pension Liability and any residual assets on the termination of the pension may be applied, to the maximum extent possible, as an inter vivos or death benefit commutation in favour of the Member, the Member's Dependants and/or legal personal representative/s as the case may be subject at all times to the pension contract and the requirements of the Relevant Law.
- (b) If the Trustee determines not to retain any such balance/related assets in the Member Account then the relevant amount may be credited to the General Reserve or be applied in such other manner as the Trustee may determine subject to the requirements of the Relevant Law.

12.4.11 Commutations by Attorney

If a Member who is in receipt of a pension is legally incapacitated the Trustee may agree with any person/s holding an enduring power of attorney for the Member, to commute any such pension, in whole or in part.

12.4.12 Commutation Authority

Upon receipt of a Commutation Authority in respect of a Member in accordance with the Relevant Law the Trustee shall commute such amount as required by the authority by debiting that amount from any

one or more of the Member's pension accounts. The commutation amount shall be credited to the Member's accumulation account and / or paid to the Member as a superannuation lump sum.

12.5 Death Benefit Nominations

- 12.5.1 A Member may at any time (irrespective of any other provision of this Deed) make a written nomination whereby the Member nominates the person/s who may benefit from the Member's Member Account or other interest in the Fund upon the death of the Member subject to such written terms and conditions as the Trustee may prescribe in relation to that nomination (**death benefit nomination**).
- 12.5.2 The death benefit nomination may be expressed as either not binding the Trustee or as binding the Trustee whether on a lapsing or non-lapsing basis.
- 12.5.3 If a Member makes a non-binding death benefit nomination then on the Member's death the Trustee shall have regard to that nomination but shall not be bound by it and shall not be required to provide reasons for the manner of the exercise of its discretion as to the application of the Benefit under clause 12.6.1.
- 12.5.4 If a Member makes a binding death benefit nomination then on the Member's death the Trustee shall apply the Benefit in accordance with that nomination provided the nomination is and remains valid.
- 12.5.5 If a Member has not made a binding death benefit nomination or the death benefit nomination is non-binding or invalid then on the Member's death the Trustee may pay or apply the Member's Benefit to one or more of the Member's Dependants and/or the Member's legal personal representatives, to the exclusion of others, as the Trustee sees fit.

12.6 Payment of Death Benefits

12.6.1 Compulsory Payment Event

If a Member dies, the Member's Benefit:

- (a) will be calculated in accordance with clause 12.2;
- (b) must be paid or applied as soon as practicable following the death of the Member in accordance with this clause 12.6; and
- (c) subject to the terms of any pension contract or binding death benefit nomination, shall be paid or applied as the Trustee sees fit:
 - (i) as one or more lump sums, annuities and/or pension benefits;
 - (ii) to either or both:
 - (A) the Member's legal personal representatives;
 - (B) one or more of the Member's Dependants.

If there are no Dependants or legal personal representatives in relation to a deceased Member then the Trustee may pay the Member's Benefit to one or more individuals as the Trustee sees fit or as otherwise authorised by the Relevant Law.

12.6.2 Existing Pensions

in the case of a Member entitled to one or more pension interests under the Fund, clause 12.6.1 shall not apply in respect of such interest/s on the Member's death but only where there are written rules governing the pension interest which expressly provide for the manner of application of the assets/amounts held referable to the Member with respect to such pension interest on death.

12.6.3 Pensions to Minors

if a pension becomes payable in respect of a minor Dependant of a deceased Member the pension may only continue to be paid until attainment of age 25 by the minor or on such other basis or for such period as may be authorised by the Relevant Law.

12.7 Non-Preserved Benefits

12.7.1 If any unrestricted non-preserved benefits (within the meaning of the Relevant Law) are held in the Fund in respect of a Member being benefits transferred to the Fund in accordance with clause 10.3 or otherwise such benefits may be paid to the Member in accordance with clause 12.1.

12.7.2 If any restricted non preserved benefits (within the meaning of the Relevant Law) are held in the Fund in respect of a Member then such benefits may be paid to the Member in accordance with clause 12.1 subject to the termination of the relevant employment or the occurrence of another Condition of Release in relation to the Member.

12.8 Forfeiture of Benefits

12.8.1 Any Member or Dependant:

- (a) who assigns or charges or attempts to charge any Benefit; or
- (b) whose Benefit whether by voluntary act, operation of law including pursuant to the provisions of the *Bankruptcy Act 1966 (Cth)* or otherwise becomes payable to or vested in any other person, company, government or other public authority;

shall forfeit such Benefit provided that this clause 12.8.1 shall not have the effect of forfeiting any Benefit or entitlement where the Member has already become entitled to that Benefit as against the Trustee in accordance with clause 12.1.

12.8.2 The Trustee shall credit all Benefits forfeited pursuant to clause 12.8.1 to the General Reserve and such Benefits shall be applied in accordance with clause 8.3.

12.8.3 The Trustee shall only forfeit a Member's entitlement or Benefit in accordance with this clause 12.8 where such forfeiture does not breach

the Relevant Law and the Trustee in giving effect to such forfeiture shall do all such things as may be required by the Relevant Law.

12.9 Deduction of Tax from Benefit

The Trustee may deduct from any Benefit or payment under this Deed any tax or duty payable from or in respect of the same whether by the Member, the Fund or the Trustee in its capacity hereunder, and may thereupon pay the said tax or duty to the Responsible Authority. The Member shall be entitled to receive only the net Benefit or payment after the deduction has been made.

12.10 Benefits Other Than in Cash

The Trustee may with the agreement of a Member or Dependant to whom a Benefit is payable transfer or vest in the Member any of the property of the Fund where such property is equivalent in value to the Benefit payable and the Trustee in determining the value to be attributed to such property may take whatever steps may be necessary to determine the true, fair and reasonable market value for that property at the time of distribution provided that the payment of a Benefit by way of transfer is authorised by the Relevant Law.

12.11 Release Authority

12.11.1 Upon receipt of a release authority in respect of a Member and in accordance with the Relevant Law the Trustee shall, where requested by the Member or as required by the Australian Taxation Office pay the amount required by the release authority to the Member or the Australian Taxation Office as the case may be.

12.11.2 A release authority for the purposes of clause 12.11.1 may arise in circumstances including, without limitation, where:

- (a) there have been excessive contributions by or in respect of a Member;
- (b) tax is levied in respect of a Member who is a high income individual; and
- (c) the Commissioner of Taxation has made a first home super saver determination in respect of the Fund for the Member.

13. TRANSFER OF BENEFITS

13.1 General

If a Member becomes eligible to join another Regulated Superannuation Fund the Trustee may if requested by the Member in lieu of part or all of any Benefit to which the Member may become entitled under this Deed, transfer to the trustees of such superannuation fund such portion of the property or moneys of the Fund as the Trustee in its discretion determines but in the event of a transfer of the whole entitlement of the Member an amount in value not less than the amount determined in accordance with clause 12.2 as if a Benefit was payable to the Member.

13.2 Contribution Splits

The Trustee may in its discretion transfer or rollover an amount subject to a split of Contributions in accordance with clause 11.3 to another Regulated Superannuation Fund.

14. ALTERATION OF THE DEED

14.1 Power to Amend

The Trustee may from time to time alter, amend, add to, delete or modify any of the provisions of this Deed by deed provided that no amendment pursuant to this clause 14 shall:

- 14.1.1 vary the main purpose of this Deed namely to establish a Regulated Superannuation Fund and to provide benefits to Members on retirement or to the Dependents of Members in the event of death before retirement of the Member; or
- 14.1.2 have the effect of reducing any Benefits that have accrued or have become payable to a Member before the amendment taking effect except that where such reduction is required by reason of any tax payable on income of the Fund, where such reduction is to enable compliance with the Relevant Law, where the affected Members have approved of the reduction in writing or where the Relevant Authority has approved the reduction in writing.

14.2 Amendments Subject to Relevant Law

Notwithstanding anything in this clause 14, this Deed may not be amended if that amendment would be contrary to the requirements of the Relevant Law.

15. WINDING UP OF FUND

15.1 Winding Up Events

The Trustee shall wind up the Fund in accordance with this clause 15 on the earliest of the following dates (**Wind Up Date**):

- 15.1.1 all Members agree to wind up the Fund;
- 15.1.2 the Trustee determines that the continuation of the Fund is not reasonably justified;
- 15.1.3 the Relevant Law requires that the Fund be wound up;
- 15.1.4 the last remaining Member ceases to be a Member of the Fund and no other person has an interest in the Fund.

15.2 Winding Up Process

On the Wind Up Date:

- 15.2.1 The Trustee shall close the membership of the Fund and no further Contributions shall be accepted other than those made on or before the Wind Up Date.

- 15.2.2 The Trustee shall proceed to determine each Member's interest in the Fund taking into account matters including the amount standing to the credit of the Member's Member Account, a revaluation of the Fund assets, the amount standing to the credit of the General Reserve and any other reserve under the Fund and provision for the expected costs of winding up the Fund.
- 15.2.3 The Trustee may pay the Member's Benefit (calculated as the amount of the Member's interest in the Fund in accordance with clause 12.2) to the Member or transfer the amount of the Benefit or assets of the Fund equivalent in value to the amount of the Benefit to another Superannuation Entity in accordance with clause 13.1.
- 15.2.4 Following the determination of each Member's interest in the Fund in accordance with clause 15.2.2 any residual Fund assets shall be applied by the Trustee on a fair and reasonable basis as between the Members or otherwise on such basis as may be authorised by the Relevant Law.
- 15.2.5 The payment or transfer of a Member's Benefit in accordance with this clause 15.2 shall subject to the Relevant Law be a complete and final discharge to the Trustee and the Fund in respect of that Member.

16. DEED SUBJECT TO RELEVANT LAW

Notwithstanding anything else contained in this Deed, to the extent to which the Relevant Law imposes any requirements that must be met by the Fund or by the Trustee (in terms of being a Regulated Superannuation Fund which is a complying superannuation fund), then those requirements shall be deemed to be a requirement of this Deed.

EXECUTED as a Deed

EXECUTED by)
THORP INVESTMENTS AUSTRALIA PTY LTD)
ACN 661 075 056)


.....
Signature of Director / Sole Director and Secretary


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Name


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Signature of Director / Secretary


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Name