

# **PJ & MT SUPER FUND**

## **Declaration of Trust**

**Michael Nicholas Tkaczuk**

**Priscilla Grace Jordan**

**Trustees**

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# Declaration of Trust

RevenueSA - Stamp Duty - ABN 19 040 349 865 ©	
RevNetID/PRA Bundle No.:	120008165
Orig/Copy	1 of with 3 copies
Consideration/Value/Security:	\$
SA Proportion (if applicable):	\$
SD: \$	--- LTR Fees: \$
Int: \$	--- Pst/Ad Tax: \$
Signature:	MN [Signature] Date: 13/10/08

BY the person named in Item 1 of the Schedule (**Trustee**)

## Introduction

- A. The Trustee wishes to establish a superannuation fund for the benefit of Members and their Dependants and for the purposes permitted under Superannuation Law.
- B. The Trustee agrees to act as the trustee of the Fund.
- C. The Trustee agrees to hold \$1.00 as the initial settlement sum and other assets to form the Fund on trust for the Beneficiaries.

## Operative clauses

### Part 1 – Preliminary

#### 1. Definitions

1.1 In this deed:

**Account Based Pension** means a pension that satisfies the requirements of subparagraph (9A)(a) of Regulation 1.06 of the Superannuation Industry (Supervision) Regulations 1994 and all other relevant provisions of Superannuation Law;

**Annuity** means a benefit provided by a life insurance company or a registered organisation taken to be an annuity for the purposes of Superannuation Law;

**Approved Benefit Arrangement** means a superannuation fund regulated under Superannuation Law or a retirement savings account (under the Retirement Savings Account Act 1997) from which the Trustee may accept, or to which the Trustee may transfer or rollover, benefits for a Beneficiary in accordance with the requirements of Superannuation Law;

**Beneficiary** means a person (including a Member) who has a beneficial interest in the Fund including, for the avoidance of doubt, any Legal Personal Representative of such Beneficiary;

**Beneficiary Account** means an account kept for a Beneficiary under clause 20;

**Binding Nomination Form** means a form completed in accordance with clause 36 that satisfies the Superannuation Industry (Supervision) Regulations 1994;

**Business Day** means any day except a Saturday or a Sunday or other public holiday in the State or Territory of Australia identified in Item 4 of the Schedule;

**Co-contribution Legislation** means the Superannuation (Government Co-contribution for Low Income Earners) Act 2003, any Regulations made pursuant to that Act including any amendments, substituted legislation and any statutory instruments issued pursuant to that legislation and in force;

**Contributions-Splitting Application** means the same as under Superannuation Law;

**Dependant** of a person means:

- (a) that person's husband, wife, widower or widow;
- (b) anyone else who, although not legally married to that person, in the opinion of the Trustee, lives or lived with that person on a genuine domestic basis as the wife or husband of that person;
- (c) a child of that person including an adopted child, a stepchild or an ex-nuptial child of that person;
- (d) anyone else who, in the Trustee's opinion, is at the relevant date wholly or partly financially dependent on that person; or
- (d) anyone else who is a dependant or with whom that person has a interdependency relationship within the meaning of those terms under Superannuation law;

**Eligible Person** means a person who is:

- (a) eligible to become a Member under Superannuation Law; and
- (b) approved by the Principal Member (if any) for membership;

**Excess Concessional Contributions Tax** means any tax imposed under the Superannuation (Excess Concessional Contributions Tax) Act 2007 or the Superannuation (Excess Non-Concessional Contributions Tax) Act 2006 or successor legislation;

**Fund** means the assets held by or for the Trustee upon the trusts of this deed, and all additions and increases thereto;

**Fund Expense** means an expense of establishing, operating, managing or administering the Fund;

**Legal Personal Representative** means the executor of the will or 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;

**Member** means a current member of the Fund and includes a person receiving a Pension or Annuity from the Fund;

**Non-Account Based Pension** means a pension that satisfies the requirements of subparagraph (9A)(b) of Regulation 1.06 of the Superannuation Industry (Supervision) Regulations 1994 and all other relevant provisions of the Superannuation Law;

**Non-Binding Nomination Form** means a form completed in accordance with clause 35;

**Non-Member Spouse** means the same as under Superannuation Law;

**Pension** means a benefit taken to be a pension for the purposes of Superannuation Law at any given time and includes an Account Based Pension and a Non-Account Based Pension;

**Policy** means an insurance policy on the life or health of a Member or a group of Members taken out by the Trustee;

**Preserved and Non-Preserved Benefits** means the same as under Superannuation Law;

**Principal Member** means the person or persons named, (if any) in Item 3 of the Schedule or any substitute whom that person or those persons nominates in writing (including by will), or if there is no Principal Member a person or persons nominated by the trustee in writing. The person appointed as a Principal Member may resign in writing without appointing a substitute;

**Reserve Account** means an account kept under clause 20 or 22;

**Retire** means the same as under Superannuation Law;

**Reversionary Beneficiary** means a person nominated by a Beneficiary receiving a Pension on commencement of the Pension to be entitled to receive the Pension on the death of the Beneficiary receiving the Pension;

**Self Managed Superannuation Fund** means the same as under Superannuation Law;

**Splittable Contributions** means the same as under Superannuation Law;

**Superannuation Guarantee Legislation** means the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992, any Regulations made pursuant to those Acts including any amendments, substituted legislation and any statutory instruments issued pursuant to that legislation and in force;

**Superannuation Law** means the requirements of the Superannuation Industry (Supervision) Act 1993, the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Superannuation Guarantee Legislation, the Family Law Act 1975, the Corporations Act 2001, the Co-contribution Legislation, any Regulations made pursuant to those Acts and any other law relevant to the administration and management of the Fund, including any amendment to any law, any legislation substituted for any law, and any statutory instruments issued under any law and in force;

**Trustee** means the person or persons named in Item 1 and if there is more than one trustee, all of the trustees of the Fund and any original, additional or substituted trustee(s) of the Fund for the time being.

1.2 In this deed, unless the context otherwise requires:

- (a) a reference to this deed means this document as amended under clause 50;
- (b) the Introduction is correct;
- (c) headings, notes or the table of contents do not affect interpretation;
- (d) a reference to legislation or law includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- (e) singular includes plural and plural includes singular;

- (f) words of one gender include both other genders;
- (g) a reference to a person includes any natural person or persons, corporation, trustee, partnership, a firm and any other entity and their authorised officers, agents, administrators, successors and executors;
- (h) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (i) a provision must be read down to the extent necessary to be valid and if it cannot be read down to that extent, it must be severed;
- (j) if a thing is to be done on a day which is not a business day, it must be done on the business day before that day. (A business day means any day except a Saturday or Sunday or other public holiday in the State whose laws govern the operation of this deed);
- (k) a reference tax includes income tax, land tax, stamp duty, superannuation contributions surcharge and any other tax, charge or government fee on any part of the Fund or on any transfer of money or property to or from the Fund;
- (l) another grammatical form of a defined expression has a corresponding meaning.

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## **2. Establishment**

- 2.1 From the date of this deed, the Trustee holds the Fund on trust for the Beneficiaries.
- 2.2 The name of the trust is set out in Item 2 of the Schedule.
- 2.3 A Beneficiary has a beneficial interest in the whole Fund, but not an interest in any particular investment of the Fund (including an investment authorised by that Beneficiary).

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## **3. Nature**

- 3.1 The Fund is an indefinitely continuing superannuation fund that shall be constituted to meet the conditions of a Self Managed Superannuation Fund under Superannuation Law.

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## **4. Purpose**

- 4.1 While the Trustee of the Fund is not a constitutional corporation, the sole or primary purpose of the Fund is the provision of old-age pensions and any other purposes permitted under Superannuation Law.

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## **5. Superannuation Law**

- 5.1 A Superannuation Law prevails over any provision of this deed to the extent of any inconsistency and to the extent that Superannuation Law imposes any requirement on the Fund, such requirement is deemed to a requirement of this deed.

## **Part 2 – Membership**

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### **6. Admission of Members**

- 6.1 An Eligible Person may apply to become a Member of the Fund, in any form the Trustee requires.
- 6.2 If the Trustee accepts the application, the Eligible Person becomes a Member on the date of acceptance or any other date the Trustee decides.
- 6.3 The Trustee may refuse an application without giving reasons.
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### **7. Membership ceases**

- 7.1 A person ceases to be a Member when:
- (a) all benefits under the Fund for that person have been paid, rolled over or transferred; or
  - (b) that person dies.
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### **8. Information**

- 8.1 Each applicant and each Member must provide to the Trustee any information and evidence and sign any documents that the Trustee requires.
- 8.2 A Member must immediately notify the Trustee upon ceasing to be an Eligible Person.
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### **9. Special conditions**

- 9.1 If an applicant or Member does not fully comply with clause 8, or misrepresents something to the Trustee, or the Trustee otherwise considers it appropriate, the Trustee may impose special conditions on that person's membership and benefits from the Fund.
- 9.2 The Trustee may amend those special conditions.
- 9.3 Subject to clause 5, those special conditions override this deed to the extent of any inconsistency.
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### **10. Deed**

- 10.1 This deed binds each Member.
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## **Part 3 – Contributions**

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### **11. Payment**

- 11.1 A Member may contribute any amount of money, property or other assets (including assets in specie) to the Fund at any time, subject to Superannuation Law and the consent of the Trustee.
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- 11.2 Any other person may contribute any amount of money or property to the Fund on behalf of a Member at any time, subject to Superannuation Law and the consent of the Trustee.
- 11.3 The Trustee may accept any amount contributed on behalf of a Member under the SG Legislation or the Co-contribution Legislation.
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## **12. Refusal**

- 12.1 The Trustee may refuse any contribution to the Fund without giving reasons.
- 12.2 The Trustee may refund any contribution not allowed by Superannuation Law, after deducting taxes and expenses incurred by the Trustee on the contribution and in so refunding any such contribution, the Trustee is entitled to (but is not liable or required to) pay any earnings or interest attributable to such contribution.
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## **13. Excess Concessional Contributions Tax**

- 13.1 The Trustee shall inform any relevant Member where a contribution or payment has been made to the Fund that will or will likely cause such Member to become liable to Excess Concessional Contributions Tax.
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## **14. Contribution Splitting**

- 14.1 A Member may make a Contributions-Splitting Application to the Trustee to rollover, transfer or allot that Member's Splittable Contributions for the benefit of the Member's spouse, in any form the Trustee requires.
- 14.2 The Trustee may only accept a Contributions-Splitting Application in the circumstances permitted under Superannuation Law.
- 14.3 If the Trustee accepts a Contributions-Splitting Application, the Trustee must rollover, transfer or allot all or part of that Member's Splittable Contributions for the benefit of the Member's spouse in accordance with the Member's Contributions-Splitting Application or on any other terms that the Trustee decides that is consistent with Superannuation Law.
- 14.4 The Trustee may refuse a Contributions-Splitting Application in whole or part without giving reasons.
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## **Part 4 – Investment**

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### **15. General**

- 15.1 To the extent permitted by Superannuation Law, the Trustee may invest and reinvest the Fund in any form of investment.
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### **16. Individual**

To the extent permitted by Superannuation Law:

- (a) A Beneficiary may authorise the Trustee to invest all or part of the Beneficiary's Beneficiary Account balance in a particular manner.
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- (b) With the Trustee's consent, a Beneficiary may revoke or amend an investment authority with effect from a date set by the Trustee.
- (c) The Trustee may accept or reject the investment authority by notice to the Beneficiary.
- (d) The Trustee must provide to the Beneficiary any information required by Superannuation Law, before the Beneficiary gives the investment authority.
- (e) If a Beneficiary does not give an investment authority, or the Trustee rejects the investment authority, the Trustee may invest the Beneficiary Account balance as the Trustee decides.
- (f) The Trustee is not liable for any loss by a Beneficiary arising from an investment authorised by that Beneficiary.

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## **17. Policies**

To the extent permitted by Superannuation Law:

- (a) The Trustee may take out and maintain any Policy requested by a Member.
- (b) The Trustee may cancel a Policy over a Member, if the Member's account balance is zero, or the Member request the Trustee to cancel the Policy.
- (c) The Trustee alone may enforce a Policy.
- (d) The Trustee may:
  - (1) receive the proceeds of any Policy; or
  - (2) direct the insurer to pay the proceeds of any Policy to a person the Trustee nominates.
- (e) The Trustee may pay all Policy premiums from the Fund.

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## **18. Other income**

- 18.1 In addition to contributions, rollovers and income, the Trustee may accept any other assets into the Fund.
- 18.2 The Trustee may treat those assets as income of the Fund or in any other way.

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## **19. Borrowing and Instalment Warrants**

The Trustee may enter into arrangements to:

- (a) borrow money;
- (b) maintain an existing borrowing of money;
- (c) secure the payment or repayment of any borrowing; or
- (d) invest in instalment warrants;

but in each case, strictly subject to the extent permitted by Superannuation Law.

## Part 5 – Accounts

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### 20. Beneficiary Account

- 20.1 The Trustee must keep a Beneficiary Account for each Beneficiary, to determine benefits payable in respect of that Beneficiary.
- 20.2 The Trustee must credit the Beneficiary Account with:
- (a) contributions for the Beneficiary;
  - (b) amounts rolled over or transferred into the Fund from an Approved Benefit Arrangement for the Beneficiary including pursuant to a Contributions-Splitting Application;
  - (c) amounts allotted for the Beneficiary pursuant to a Contributions-Splitting Application;
  - (d) amounts rolled over or transferred for the Beneficiary pursuant to an order or agreement under the Family Law Act 1975;
  - (e) proceeds of a Policy over the Beneficiary (unless the Trustee directs the insurer to pay the proceeds to a person the Trustee nominates);
  - (f) positive earnings which the Trustee decide to allocate to the Beneficiary Account;
  - (g) any other amounts which the Trustee decides.
- 20.3 The Trustee must debit the Beneficiary Account with:
- (a) benefits paid from the Beneficiary Account to or for the Beneficiary;
  - (b) amounts rolled over or transferred from the Fund to an Approved Benefit Arrangement for the Beneficiary;
  - (c) amounts allotted, transferred or rolled over for the benefit of the Beneficiary's spouse pursuant to a Contributions-Splitting Application;
  - (d) amounts rolled over or transferred from the Beneficiary Account pursuant to an order or agreement under the Family Law Act 1975;
  - (e) Policy premiums for the Beneficiary which the Trustee decides to allocate to the Beneficiary Account;
  - (f) taxes on contributions by or for the Beneficiary and on benefits to or for the Beneficiary which the Trustee decides to allocate to the Beneficiary Account;
  - (g) the Beneficiary's share of Fund Expenses;
  - (h) negative earnings which the Trustee decides to allocate to the Beneficiary Account;
  - (i) any other amounts which the Trustee decides.

20.4 The Trustee must maintain records concerning the Beneficiary Account in accordance with Superannuation Law of:

- (a) the Preserved and Non-Preserved Benefits; and
- (b) any flagging agreement, flagging order or splitting agreement or other order or agreement notified to the Trustee made pursuant to the Family Law Act 1975.

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## **21. General Reserve Account**

21.1 The Trustee may keep a General Reserve Account.

21.2 The Trustee may credit the General Reserve Account with:

- (a) any positive earnings not allocated to Beneficiary Accounts;
- (b) any bonus or rebate under a Policy, not allocated to Beneficiary Accounts;
- (c) any amount left in a Beneficiary Account after all benefits have been paid to the Beneficiary;
- (d) any Fund Expenses, Policy premiums or tax debited to Beneficiary Accounts but not yet paid;
- (e) any forfeited benefits;
- (f) any other amounts the Trustee decides.

21.3 The Trustee may debit the General Reserve Account with:

- (a) any losses, Policy premiums or Fund Expenses not allocated to Beneficiary Accounts;
- (b) any amounts which the Trustee decides to credit Beneficiary Accounts as deemed contributions or as additional earnings or as over-estimated Fund Expenses, Policy premiums or tax;
- (c) any other amounts the Trustee decides.

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## **22. Other accounts**

22.1 The Trustee may keep any other accounts it decides, including a Reserve Account for any specific purpose it decides.

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## **23. Fund Expenses**

23.1 The Trustee must pay all Fund Expenses from the Fund.

23.2 The Trustee may determine a Beneficiary's share of Fund Expenses (not already taken into account in determining earnings) in any combination of the following ways:

- (a) an equal amount for each Beneficiary;
- (b) in proportion to the balance of each Beneficiary Account;

- (c) according to the Fund Expenses incurred in making or changing investments authorised by that Beneficiary.
  - 23.3 As at each 30 June and any other date the Trustee decides, the Trustee must determine each Beneficiary's share of Fund Expenses.
  - 23.4 The Trustee may prospectively determine Fund Expenses. The Trustee may later adjust Beneficiary Accounts and/or the Reserve Account to take into account any difference between actual and anticipated Fund Expenses. However, the Trustee must not adjust a Beneficiary Account after the relevant Beneficiary has been paid their benefit from the Fund.
  - 23.5 The Trustee may pay Fund Expenses from a Reserve Account.
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## **24. Earnings**

- 24.1 As at each 30 June and any other date the Trustee decides, the Trustee must:
  - (a) revalue the Fund assets (including investments authorised under clause 16);
  - (b) determine the after tax earnings (positive or negative) of each investment authorised by a Beneficiary under clause 16, and allocate those earnings to that Beneficiary's Beneficiary Account;
  - (c) determine the after tax earnings (positive or negative) of all the other assets of the Fund, and allocate those earnings to Beneficiary Accounts in a fair manner.
- 24.2 The Trustee must take into account provision for contingencies, unrealised gains or losses on valuation, and any other factors the Trustee decides.
- 24.3 The Trustee may prospectively determine earnings when a benefit is payable from the Fund.
- 24.4 The Trustee may pay earnings to a Reserve Account.

## **Part 6 – Benefits**

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### **25. Amount and circumstances**

- 25.1 A benefit equal to the balance of a Member's Beneficiary Account becomes payable, if:
    - (a) the Member requests payment and a condition of release is satisfied under Superannuation Law; or
    - (b) the Member must, under Superannuation Law, commence to receive a benefit from the Fund.
  - 25.2 If a benefit becomes payable to a Member under clause 25.1 or 26.1, the Trustee on request of the Member, may in any combination and on any terms and conditions it wishes to impose but subject always to Superannuation Law:
    - (a) retain all or part of the Member's benefit in the Fund;
    - (b) pay the benefit by lump sum;
-

- (c) pay the benefit by Pension;
  - (d) purchase an Annuity with the benefit;
  - (e) pay the benefit in the form of an asset (including an asset in specie).
- 25.3 For any other Beneficiary entitled to a benefit, the Trustee must, in accordance with Superannuation Law, in any combination the Trustee decides:
- (a) retain all or part of the Beneficiary's benefit in the Fund;
  - (b) pay the benefit by lump sum;
  - (c) pay the benefit by Pension;
  - (d) purchase an Annuity with the benefit;
  - (e) pay the benefit in the form of an asset (including an asset in specie).
- 25.4 The Trustee, subject to the requirements of Superannuation Law, may in its absolute discretion pay:
- (a) a lump sum benefit to a Beneficiary as one lump sum amount or two or more lump sum amounts; and
  - (b) a pension benefit to a Beneficiary as one pension or two or more pensions.
- 25.5 A benefit also becomes payable if the Trustee is required to pay an amount from a Member's Beneficiary Account pursuant to an order or agreement under the Family Law Act 1975. The Trustee must pay, flag or transfer the benefit as required under Superannuation Law.
- 25.6 The Trustee may pay a benefit from the Fund at any place, in any manner, and within any reasonable time the Trustee decides.
- 25.7 With the consent of the Beneficiary, the Trustee may pay a benefit to that Beneficiary by transferring to that Beneficiary an investment of the Fund of equivalent value.

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## **26. Pension benefits**

- 26.1 Where the Trustee is permitted or otherwise required to pay any Pension or Annuity, the Trustee shall pay any such Pension or Annuity subject to such provisions as the Trustee may determine necessary to ensure that there is no contravention of Superannuation Law and that the Fund remains a complying superannuation fund at all times for Superannuation Law purposes.
- 26.2 In respect of any Pension permitted or otherwise required to be paid, the Trustee may:
- (a) set apart the assets of the Fund which will fund the Pension in a Reserve Account;
  - (b) obtain any certificates the Trustee decides about the adequacy of those assets for current and non-current Pension liabilities;
  - (c) invest those assets on the same basis that it invests any other assets of the Fund (including in investments authorised by the Beneficiary).

- 26.3 After the death of a Beneficiary receiving a Pension, the Trustee must pay the assets which fund the Pension in accordance with and as permitted by Superannuation Law, to the Reversionary Beneficiary. If there is no Reversionary Beneficiary the Trustee may pay the assets, in any combination the Trustee decides:
- (a) to a Reserve Account; or
  - (b) subject to the terms of the Pension, in accordance with clause 28.1(a) to 28.1(c).
- 

## **27. Commutation of Pension**

- 27.1 At the request of a Beneficiary receiving a Pension, the Trustee may only commute all or part of a Pension to a lump sum, or for a rollover a Pension to another account within the Fund, or for the payment of a new Pension to the extent and as permitted by Superannuation Law.
- 27.2 The Trustee may then, in any combination the Trustee decides:
- (a) reduce the number of instalments of any remaining Pension;
  - (b) reduce the amount of each instalment of any remaining Pension;
  - (c) obtain any certificates the Trustee decides about the adequacy of the assets which will fund the pension for current and non-current Pension liabilities.
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## **28. Death benefits**

- 28.1 Subject to Superannuation Law, if a Member dies, the Trustee must pay the benefit:
- (a) in accordance with the Member's valid Binding Nomination Form (if any); or
  - (b) if that Member did not have a valid Binding Nomination Form, to any Dependents of that Member the Trustee decides and any legal personal representative of that Member, in any proportions the Trustee decides taking into consideration the Member's valid Non-Binding Nomination Form (if any);
  - (c) if, within 3 months after the death, the Trustee cannot find any Dependents of that Member and there are no legal personal representatives of the deceased, to relatives of that Member, or to any other person or Reserve Account as permitted by Superannuation Law, as the Trustee decides in any proportions the Trustee decides.
  - (d) if the Member is a Beneficiary receiving a Pension, in accordance with 26.3.
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## **29. Beneficiary under a disability**

- 29.1 If a Beneficiary is under 18 years or the Trustee considers it is in the Beneficiary's best interests, the Trustee may pay all or part of that Beneficiary's benefit:
- (a) by spending it for the advancement, maintenance, education or benefit of that Beneficiary; or
  - (b) to a person who appears to the Trustee to be a trustee, spouse, child, parent, guardian, carer or custodian of that Beneficiary.
- 29.2 The receipt of the payee discharges the Trustee.
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### **30. Place and manner of payment**

- 30.1 The Trustee may pay a benefit from the Fund at any place, in any manner, and within any reasonable time the Trustee decides.
- 30.2 With the consent of the Beneficiary, the Trustee may pay a benefit to that Beneficiary by transferring to that Beneficiary an investment of the Fund of equivalent value.
- 30.3 The Trustee may in their absolute discretion pay:
- (a) a lump sum benefit to a Beneficiary as one lump sum amount or two or more lump sum amounts; and
  - (b) a pension benefit to a Beneficiary as one pension or two or more pensions.

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### **31. Proofs**

- 31.1 The Trustee may base a decision on evidence not legally proved.

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### **32. Payment conditional on evidence**

- 32.1 The Trustee may require a Beneficiary to provide any information or evidence or do any act the Trustee decides.
- 32.2 The Trustee may withhold a benefit until the Beneficiary complies with the previous sub-clause.

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### **33. No claim apart from deed**

- 33.1 No Beneficiary is entitled to payment from the Fund except as expressed in this deed.

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### **34. Forfeiture of benefits**

- 34.1 A Beneficiary forfeits their whole entitlement in the Fund if:
- (a) the Beneficiary assigns or charges their entitlement or interest in the Fund;
  - (b) that entitlement becomes payable to another person;
  - (c) the Beneficiary is unable personally to receive or enjoy that entitlement; or
  - (d) in the Trustee's opinion, the Beneficiary is incapable of managing their affairs.
- 34.2 The Trustee may:
- (a) pay or apply a Beneficiary's forfeited entitlement to or for that Beneficiary's Dependents;
  - (b) pay or apply a Beneficiary's forfeited entitlement to a Reserve Account; or
  - (c) if the reason for forfeiture ceases, credit the balance of the forfeited entitlement (not paid or applied or used under this sub-clause) to the relevant Beneficiary Account or pay the entitlement to the Beneficiary as the Trustee decides.



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### **35. Nominated Dependants**

- 35.1 A Member may nominate one or more of the Dependants and the legal personal representative of that Member, to receive that Member's entitlement when that Member dies, in any form the Trustee requires.
- 35.2 The Trustee may require a Member to complete a new Non-Binding Nomination Form at any time.
- 35.3 A Non-Binding Nomination Form is or becomes invalid if:
- (a) Superannuation Law does not permit the Trustee to follow the nomination form;
  - (b) the Member completes a later valid Non-Binding Nomination Form;
  - (c) the Member has a valid Binding Nomination Form.
- 35.4 The Trustee need not inform the Member that a Non-Binding Nomination Form is invalid.
- 35.5 To remove any doubt, in this clause, **Member** includes a former Member receiving a Pension.

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### **36. Binding Nomination**

- 36.1 A Member may nominate one or more of the Dependants and the Legal Personal Representative of that Member, to receive that Member's entitlement when that Member dies, in a form binding upon the Trustee in accordance with the requirements of section 59(1A) of the *Superannuation Industry Supervision Act 1993*, as if (only for the purposes of this clause) that section applied to a Self Managed Superannuation Fund.
- 36.2 Unless the Trustee requires a Member to complete a new Binding Nomination Form at any time, all Binding Nomination Forms shall last indefinitely.
- 36.3 To remove any doubt in this clause, **Member** includes a former Member receiving a Pension.

## **Part 7 – Transfers and Rollovers**

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### **37. Transfers and Rollovers from an Approved Benefit Arrangement**

- 37.1 At the request of a Member, the Trustee may accept money or assets from an Approved Benefit Arrangement, the superannuation holding accounts reserve under the Small Superannuation Accounts Act 1995 or pursuant to a Contributions-Splitting Application to provide benefits for that Member.
- 37.2 The Trustee may accept that money or assets on any terms.
- 37.3 The Trustee may refuse that money or assets without giving reasons.

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### **38. Transfers and Rollovers to an Approved Benefit Arrangement**

- 38.1 At the request of a Beneficiary, the Trustee may transfer or rollover all or part of the Beneficiary's entitlement to an Approved Benefit Arrangement for the benefit of that Beneficiary, including by transferring an investment of the Fund of equivalent value.

- 38.2 The Trustee may allot, transfer or rollover all or part of the Beneficiary's entitlement for the benefit of that Beneficiary's spouse only in accordance with clause 14 or pursuant to a benefit payable in accordance with clause 25.5.
- 38.3 The Trustee may keep enough of the entitlement to cover contingent liabilities.
- 38.4 The Trustee may transfer or rollover the entitlement on any terms.
- 38.5 The receipt of the transferee discharges the Trustee.

## **Part 8 – Management of Fund**

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### **39. Trustee**

- 39.1 The Trustee must be at least two natural persons or a constitutional corporation (within the meaning of Superannuation Law).
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### **40. Appointment and removal of trustee**

- 40.1 The Principal Member or if there is no Principal Member, the Members may by deed:
- (a) appoint a substitute or additional trustee;
  - (b) remove a trustee.
- 40.2 If a trustee vacates office leaving only one natural person as trustee or no trustee, the Principal Member or if there is no Principal Member, the Members must appoint a new trustee.
- 40.3 A trustee vacates office if:
- (a) the trustee is removed pursuant to clause 40.1;
  - (b) that trustee resigns by notice to the Members;
  - (c) that trustee is a corporation and becomes an externally-administered body corporate (within the meaning of the Corporations Act 2001);
  - (d) that trustee is a natural person and dies or is found to be of unsound mind or becomes an insolvent under administration (within the meaning of the Corporations Act 2001); or
  - (e) that trustee is a disqualified person (within the meaning of superannuation law) or is otherwise ineligible to be a trustee of the Fund.
- 40.4 On vacating office, a trustee must:
- (a) promptly deliver all documents, records, money and property to the new or remaining Trustee; and
  - (b) do everything necessary to transfer the legal title of the Fund to the new or remaining Trustee.
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## 41. Minutes

- 41.1 The Trustee must record its decisions in written minutes or written resolutions, signed by the Trustee (or the directors of a corporate Trustee).
- 41.2 Signed minutes or resolutions are sufficient evidence of decisions and proceedings at meetings unless proved incorrect.

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## 42. Powers of Trustee

- 42.1 The Trustee alone administers the Fund.
- 42.2 The Trustee has:
- (a) the legal capacity and powers of a natural person;
  - (b) the powers of a trustee by law; and
  - (c) the powers of a company under the Corporations Act 2001 (if a company).
- 42.3 The Trustee may do anything it thinks fit to:
- (a) comply with Superannuation Law;
  - (b) administer the Fund.
- 42.4 Without limiting the previous sub-clauses, the Trustee may:
- (a) open an account with any bank, building society, credit union or other financial institution (**institution**);
  - (b) operate that account in accordance with the customs, usages and practices of the institution. This includes the Trustee:
    - (1) drawing, making, accepting, endorsing, executing and issuing promissory notes, bills of exchange, bills of lading, cheques and other negotiable instruments;
    - (2) overdrawing the account as allowed by Superannuation Law;
    - (3) permitting the institution to debit the account with charges and duties;
  - (c) appoint an attorney (or joint and several attorneys, or joint or several attorneys) to exercise any trust or power;
  - (d) make an election under Superannuation Law;
  - (e) delegate any trust or power to any person on any terms (while retaining the right to exercise that trust or power);
  - (f) revoke any delegation of a trust or power.

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### **43. Trustee may act despite interest**

- 43.1 A trustee of the Fund may act as a director of a corporation in which the Fund is invested and may retain remuneration for so acting.
- 43.2 A trustee of the Fund may exercise or concur in exercising a trust or power, even if the trustee has a personal interest in the outcome, or is a Beneficiary or related to a Beneficiary.
- 43.3 A trustee of the Fund may retain a benefit from a dealing in which the trustee has a personal interest.
- 43.4 A trustee of the Fund may deal with any of the other trustees (in the trustee's own capacity or as trustee of another fund).
- 43.5 In this clause, **trustee** also includes a director of a corporate trustee.

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### **44. Trustee not liable**

- 44.1 A trustee of the Fund acting in good faith in that capacity is not liable to compensate the Fund for any loss or breach of trust.
- 44.2 In this clause, **trustee** also includes a director of a corporate trustee.

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### **45. Indemnity**

- 45.1 A trustee of the Fund is entitled to indemnity from the Fund for any liability incurred in that capacity to the extent allowed by law.
- 45.2 No Beneficiary is liable to indemnify a trustee of the Fund, even for a liability which the Beneficiary asked or authorised the Trustee to incur.
- 45.3 The Trustee may take out trustee liability insurance and pay the premiums from the Fund.
- 45.4 In this clause, **trustee** includes a director of a corporate trustee, a former trustee, or a director of a former corporate trustee.

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### **46. Remuneration**

- 46.1 A trustee of the Fund is not entitled to remuneration for holding office.
- 46.2 In this clause, **trustee** also includes a director of a corporate trustee.

## **Part 9 – Administration of Fund**

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### **47. Audit**

- 47.1 The Trustee:
- (a) must appoint an auditor who is authorised to audit the Fund under Superannuation Law;
  - (b) may remove the auditor and appoint a new auditor.

47.2 The auditor must audit the accounting records of the Fund and produce an annual report for the Trustee in the form required by Superannuation Law.

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#### **48. Tax**

48.1 The Trustee must comply with all laws about the deduction and payment of tax on behalf of the Fund and its Members.

48.2 The Trustee may:

- (a) deduct tax from money paid into the Fund, benefits paid out of the Fund and any Beneficiary Account;
  - (b) make provision for tax and debit that amount to any Beneficiary Account or the Reserve Account;
  - (c) pay tax or arrange for another person to do so; and
  - (d) pay to any Member an amount equal to any Excess Concessional Contributions Tax for which such Member is liable in respect of any contribution or payment to the Fund on behalf of such Member.
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#### **49. Currency**

49.1 All payments to or from the Fund must be in Australian currency, except where the Trustee decides otherwise.

49.2 The Trustee may convert an amount into Australian currency using any exchange rate the Trustee decides.

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#### **50. Amendment**

50.1 The Principal Member or if there is no Principal Member, the Trustee may by deed amend this deed.

50.2 An amendment takes effect from:

- (a) the date specified in the deed; or
- (b) if no date is specified, the date the deed is executed.

50.3 As soon as practicable, the Trustee must notify each Member about the nature and purpose of the amendment and any effect on the Member's entitlement.

50.4 Section 39B Trustee Act 1936 of South Australia or equivalent provision in legislation of another jurisdiction governing this trust deed, does not apply.

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#### **51. Termination**

51.1 The Principal Member or if there is no Principal Member, the Trustee may resolve to end the Fund.

51.2 If the Principal Member or the Trustee resolves to end the Fund, the Trustee must:

- (a) not accept any more contributions;
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- (b) not take out any new Policies;
- (c) pay all Fund Expenses, taxes and liabilities and allow for future taxes and liabilities;
- (d) determine and allocate Fund Expenses in accordance with clause 23;
- (e) determine and allocate earnings in accordance with clause 24;
- (f) transfer or rollover each Beneficiary's entitlement to an Approved Benefit Arrangement or pay each Beneficiary's entitlement to the Beneficiary in accordance with this deed.

51.3 The Fund ends when the Trustee has paid or applied all entitlements in accordance with this deed.

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## **52. Notice**

52.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.

52.2 Notice may be given to a person:

- (a) personally;
- (b) by leaving it at the person's address last notified;
- (c) by sending it by pre-paid mail to the person's address last notified;
- (d) by sending it by facsimile to the person's facsimile number last notified and then confirming it by pre-paid mail to the person's address last notified;
- (e) by advertisement in any newspaper the Trustee decides.

52.3 Notice is deemed to be received by a person:

- (a) when left at the person's address;
- (b) if sent by pre-paid mail, on the third Business Day after posting;
- (c) if sent by facsimile and confirmed by pre-paid mail, at the time and on the day shown in a sending machine's transmission report which indicates that the whole facsimile was sent to the person's facsimile number last notified (or if the day shown is not a Business Day or if the time shown is after 5pm in the person's time zone, at 9am on the next Business Day); and
- (d) if advertised in a newspaper, on the third Business Day after the newspaper is published.

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## **53. Governing law**

53.1 The validity of this trust is governed by the law of the State or Territory of Australia identified in Item 4 of the Schedule.

53.2 The administration of this trust is governed by the law of the place the Trustee decides.

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## Execution

Executed as a deed on 1st September 2008

Executed by  
Michael Nicholas Tkaczuk  
in the presence of

)  
) M. N. Tkaczuk  
) Trustee

  
.....  
Witness

Executed by  
Priscilla Grace Jordan  
in the presence of

)  
) P. Jordan  
) Trustee

  
.....  
Witness

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## Schedule

<b>Item 1</b>	<b>Trustee</b>	Michael Nicholas Tkaczuk Priscilla Grace Jordan
<b>Item 2</b>	<b>Name</b>	PJ & MT Super Fund
<b>Item 3</b>	<b>Principal Member</b>	Michael Nicholas Tkaczuk and Priscilla Grace Jordan
<b>Item 4</b>	<b>Governing Law</b>	South Australia

S1695.SUP