

# Custodian Trust Deed

Penfold & Tang IW Trust



**PENFOLD & TANG SUPER PTY LTD ACN 136 376 193 as trustee for the Penfold & Tang Superfund**

**PENFOLD & TANG IWT PTY LTD ACN 139 982 826**

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Dated : 12<sup>th</sup> AUGUST 2010

## Parties

1. **PENFOLD & TANG SUPER PTY LTD ACN 136 376 193** of 42 Tintara Street, Carseldine in the State of Queensland, as trustee for the Penfold & Tang Superfund (**Beneficial Owner**).
2. **PENFOLD & TANG IWT PTY LTD ACN 139 982 826** of the said address (**Custodian**).

## Background

- A. The Beneficial Owner acts as trustee of the Penfold & Tang Superfund (**Fund**).
- B. The Fund is a regulated superannuation fund within the meaning of the Act.
- C. The Beneficial Owner has requested that the Custodian provide, and the Custodian has agreed to provide, custodian services to the Beneficial Owner in relation to the Asset.
- D. The parties have agreed on the terms and conditions of the provision of the services as set out in this Agreement.

## Operative provisions

### 1. Definitions and interpretation

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#### 1.1 Definitions

In this Agreement the following words and phrases have the meanings as set out below unless a contrary intention appears:

**Account** means an account held with an Australian trading bank in the name of the Custodian into which Income and payments in relation to the Asset and no other moneys are paid.

**Act** means the Superannuation Industry (Supervision) Act 1993.

**Asset** means:

- (a) such item of property (whether or not presently identified) as may be purchased by the Custodian on behalf of the Beneficial Owner and at the request of the Beneficial Owner pursuant to Clause 2.1;
- (b) to the extent that the replacement of the Asset is permitted by the Act :
  - (i) in the event that the item of property is or are sold, such other item of property (whether or not presently identified) as is purchased by the Custodian on behalf of the Beneficial Owner and at the request of the Beneficial Owner pursuant to Clause 2.1, in replacement for the property referred to in paragraph (a); and

- (ii) in the event that the item of property referred to in paragraph (b)(i) is sold, such other item of property (whether or not presently identified) as is purchased by the Custodian on behalf of the Beneficial Owner and at the request of the Beneficial Owner pursuant to Clause 2.1, in replacement for the property referred to in paragraph (b)(i).

**Authority** includes any government or semi-government, statutory, public or other authority or body having jurisdiction over the Beneficial Owner, any scheme, any Asset or any matter or thing in relation to any of them.

**Borrowing** means an amount or amounts borrowed by the Beneficial Owner for the acquisition of the Asset and applied for that purpose.

**Business Day** means a day on which the Custodian is open for business in Brisbane other than a Sunday, Saturday, public holiday or bank holiday in Brisbane.

**Claim** means any claim, legal proceedings, or cause of action in contract, tort, under statute or otherwise, or threat of legal proceedings, (including any action to wind up, seek orders or terminate the scheme).

**Dollars or \$** means Australian dollars unless otherwise expressly stated.

**Effective Date:**

- (a) for the appointment of the Custodian as agent of the Beneficial Owner, means the date of this Agreement; and
- (b) for the establishment of the trust over the Asset, means the date upon which the Custodian acquires any interest in the Asset.

**Fund** means the superannuation fund described in Recital A.

**Income** means all and any entitlements arising out of ownership of the Asset including dividends, interest, rent, licence fees, hire fees and similar entitlements.

**Liabilities include:**

- (a) any amount (including without limiting this, any taxes, costs, expenses, liabilities or fees) incurred or payable by the Custodian under or pursuant to this Agreement;
- (b) any sum or amount in respect of which the Custodian is indemnified under clauses 10 or 14; and
- (c) any amount the Custodian is entitled to be paid or reimbursed under clauses 10 or 14.

**Liquidation** includes receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution and any assignment for the benefit of creditors.

**Listed Companies** means shares listed on any recognised stock exchange.

**Proper Instructions** means any instruction provided by the Beneficial Owner to the Custodian that:

- (a) is in writing;

- (b) is complete, clear and unambiguous; and
- (c) relates to the Asset.

**Regulations** means the Superannuation Industry (Supervision) Regulations 1994.

**Regulatory Requirements** means any requirements, including as set out in the Act and the Regulations, with which the Custodian and the Fund must comply for the Fund to remain a regulated superannuation fund for the purposes of the *Income Tax Assessment Act 1936*.

**Requirements** means any requirements, notices, orders or directions received from or given by any Authority, addressed to or imposed on the Beneficial Owner or the Custodian or both, whether directly or indirectly.

**Security** means any mortgage, charge or other security over the Asset given to secure borrowings by the Beneficial Owner used for acquisition of the Asset.

**Statutes** means the requirements of, and prohibitions in, all statutes, rules, regulations, proclamations, ordinances or by-laws present or future, with which the Beneficial Owner or the Custodian or both are obliged to comply.

**Taxes** includes any tax, surcharge, superannuation surcharge, duty (including stamp duty and financial institutions duty), capital gains tax, goods and services tax, value added tax, debits tax, impost, withholding tax or similar tax, or any fine, penalty or late payment interest incurred or payable or expected to be incurred or payable in respect of, or in relation to, the Assets or a Scheme by the Custodian or any other person.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) headings have been inserted only for convenience and do not affect the interpretation of this Agreement;
- (b) a reference to any document includes reference to that document's attachments and schedules and the document as amended from time to time;
- (c) a reference to a statute, ordinance, code or other law includes reference to the corresponding regulations, instruments, class orders and policy statements in all instances as amended, consolidated, re-enacted, replaced or re-written;
- (d) a reference to the parties, where relevant, includes their respective successors or permitted assigns;
- (e) the singular includes the plural and vice versa;
- (f) words and expressions importing one gender include all other genders;
- (g) 'include' and any variation of it means including without limitation and does not exclude a reference to other items, whether of the same class or genus or not;
- (h) 'quarter' and any variation of it means a calendar quarter (whether or not beginning on the first day of the quarter);

- (i) 'person' includes a natural person, a firm, a body corporate, an unincorporated association or an Authority and vice versa;
- (j) unless its application is specifically included or mandatory by law, any statute, proclamation, order, regulation, or moratorium whether Federal or State, present or future shall not apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers or remedies given to, or accruing to, the parties to this Agreement; and
- (k) if under this Agreement the day on or by which any act, matter or thing is required to be done is a day other than a Business Day, such act, matter or thing must be done on the next succeeding Business Day.

## **2. Appointment of Custodian**

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- 2.1 The Beneficial Owner may request the Custodian to purchase, on behalf of the Beneficial Owner, an item of property which the Beneficial Owner would have been capable of acquiring in its own name
- 2.2 On and from :
  - (a) the Effective Date, the Beneficial Owner appoints the Custodian as agent and trustee to acquire and hold the Asset on the terms and conditions of this Agreement; and
  - (b) the date upon which the Custodian acquires any interest in the Asset, the trust herein described shall be known as the Penfold & Tang IW Trust.
- 2.3 The Custodian accepts that appointment.
- 2.4 The Beneficial Owner undertakes, represents and warrants that the Asset will not include an asset other than:
  - (a) real property;
  - (b) shares in a Listed Company; or
  - (c) such other type of asset as the parties agree in writing.

## **3. Parties' acknowledgement and agreement re holding of Asset**

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- 3.1 The Custodian acknowledges that the Asset, and any income from the Asset, is or will be held as trustee and agent for the Beneficial Owner, and, subject to the terms of this Deed, it will deal with the Asset, and any income from the Asset, as the Beneficial Owner directs.
- 3.2 The Custodian acknowledges and declares that other than provided for in this Agreement, it has and will have no beneficial interest in the Asset.

## **4. Custodian to join in making Assets available as security**

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- 4.1 The Custodian shall, if requested by the Beneficial Owner, and subject to clause 4.2:

- (a) grant to such bank or other lender as is nominated by the Beneficial Owner, a mortgage, charge or other security (the **Security**) over the Asset to secure borrowings by the Beneficial Owner made and applied for the acquisition of the Asset (the **Borrowing**);
  - (b) sign all such documents are reasonably required by such bank or other lender in connection with the grant or maintenance of the Security; and
  - (c) sign all such documents are reasonably required to enable release of the Security.
- 4.2 The terms of the Security shall be such that the rights of the lender and holder of the Security for default:
- (a) on the Borrowing; or
  - (b) on the sum of the Borrowing and charges related to the Borrowing

shall be limited to rights against the Asset, and the lender or Security holder shall not be entitled to exercise its rights of recovery against any other asset or assets of the Beneficial Owner.

## **5. Custodian's right to retain, and Beneficial Owner's right to transfer of, legal title to Asset**

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Notwithstanding any other provision in this Deed, or the Security documents, or any other agreement between the Custodian and the Beneficial Owner, or any principle of law:

- (a) the Custodian shall be entitled to retain the legal title to the Asset so long as the Asset is available as security for repayment of obligations of the Beneficial Owner for:
  - (i) the Borrowing; or
  - (ii) the sum of the Borrowing and charges related to the Borrowing; and
- (b) subject to paragraph 5(a), the Beneficial Owner shall be entitled to call for transfer of the legal title in the Asset to the Beneficial Owner upon making payment to the bank or other lender (or to the Custodian for payment to the bank or other lender) of the sum of the Borrowing and charges related to the Borrowing, by one or more installments.

## **6. Income and Distributions**

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- 6.1 The Beneficial Owner may collect and retain the Income in respect of the Asset, and shall if requested by the Custodian, provide to the Custodian reasonable details of the transactions
- 6.2 The Custodian must, if requested by the Beneficial Owner, provide such directions or authorities as are necessary to cause any Income or other payments in respect of the Asset to be paid to the Beneficial Owner, or as the Beneficial Owner directs



- 6.3 The Custodian must, in the event that it receives any Income or other payments in respect of the Asset, on an accurate and timely basis, account to the Beneficial Owner in respect of such Income and payments, and/or apply such Income and payments at the direction of the Beneficial Owner.

## **7. Custodian's general duties and obligations**

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The Custodian must:

- (a) hold the Asset and any documents evidencing title to the Assets on the terms and conditions of this Agreement;
- (b) report to the Beneficial Owner in a timely and accurate manner;
- (c) act honestly and in good faith;
- (d) exercise the degree of care, diligence and skill that a reasonable person would exercise if they were in the Custodian's position;
- (e) if requested by the Beneficial Owner, keep proper records in respect of the Asset including separate accounts to record all transactions in relation to the Assets;
- (f) act in accordance with instructions from the Beneficial Owner in relation to all dealings with the Asset;
- (g) on request, furnish all information and records relating to the Asset which may be reasonably requested by the Beneficial Owner;
- (h) subject to this Agreement, execute such declarations, affidavits, certificates of ownership and other documents and join in and do all acts, matters and things as may reasonably be required by the Beneficial Owner;
- (i) upon request by the Beneficial Owner and upon payment of the necessary premiums by the Beneficial Owner, insure the Asset for such amounts and against such risks as the Beneficial Owner requires;
- (j) transmit to the Beneficial Owner all written information received by the Custodian from any party in connection with the Asset, within 2 Business Days of receipt of the written information by the Custodian or within such other time as may be agreed by the Custodian and the Beneficial Owner; and
- (k) on receipt of reasonable notice, co-operate with any audit conducted by the auditor of the Fund and provide such auditor with access to such accounts, records and information as may be reasonably required by the auditor during normal business hours.

## **8. Beneficial Owner's general duties and obligations**

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The Beneficial Owner must:

- (a) if required by the Custodian, acknowledge to any third party that the Custodian is an agent of the Beneficial Owner, it may only act in accordance with the terms of this Agreement and has no liability (including for negligence or breach of trust) for any act

or omission in accordance with instructions of the Beneficial Owner or otherwise in accordance with the terms of this Agreement;

- (b) provide to the Custodian from time to time when reasonably requested such instructions in relation to the Asset as the Custodian may reasonably request;
- (c) ensure that the acquisition of the Asset, any borrowing to effect that acquisition, and the sale of the Asset, are all undertaken in accordance with the Act and the Regulations; and
- (d) ensure that the Custodian is provided with such legal or other advice or assistance as the Custodian reasonably requires to comply with its obligations, at no cost to the Custodian.

## **9. Custodian's general powers without Proper Instructions**

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9.1 The Custodian has power to do any of the following on an ongoing basis without Proper Instructions:

- (a) make deductions from the Asset from time to time for the purposes of satisfying any obligation incurred by law or incurred in accordance with instructions from or at the direction of the Beneficial Owner;
- (b) receive and (subject to clause 5) hold, or procure the receipt and holding of, the Asset and where appropriate register the Asset in the name of the Custodian; and
- (c) exercise or concur in exercising all powers and discretions conferred on it by this document or by law even though:
  - (i) it or any person being a director or shareholder of it (being a company) has or may have a direct or personal interest in the mode or result of exercising such power or discretion;
  - (ii) it may benefit directly or indirectly as a result of the exercise of the power or discretion.

9.2 A company may act as custodian even if a director or shareholder of the company is a member of the Beneficial Owner or the spouse of such a member or has any other direct or indirect interest in the Fund or the income from it whether as a member or otherwise.

## **10. Custodian's general powers with Proper Instructions**

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### **10.1 Acts the Custodian may do on receipt of Proper Instructions**

Without limiting clause 9, upon receipt of Proper Instructions the Custodian may enter into any transaction or perform any act which a trustee is permitted to do by law and, without limiting this (but always upon receipt of Proper Instructions) :

- (a) acquire or dispose of the Asset;
- (b) subject to clause 4.2, grant any mortgage, charge, lien or other encumbrance over the Asset to secure repayment of borrowings made by the Beneficial Owner for the purpose of acquisition of the Asset;

- (c) enter into foreign exchange agreements for the account of the Asset;
- (d) pay, or cause to be paid, moneys out of the Asset as directed by the Beneficial Owner;
- (e) exercise voting rights and undertake other corporate actions;
- (f) enforce any rights in relation to the Asset which are required to be enforced by legal proceedings; and
- (g) any other act specified in an instruction from the Beneficial Owner.

## 10.2 Legal proceedings

- (a) During the term of this Deed, any Claim which relates to the Asset must be dealt with in the following manner unless the Claim concerns an allegation of fraud or negligence against the Custodian:
  - (i) the Custodian must promptly notify the Beneficial Owner in writing of any Claim of which the Custodian has notice, or becomes aware, and must not make any admission or purport to settle any such Claim without the Beneficial Owner's prior written consent; and
  - (ii) the Custodian must, at the Beneficial Owner's request, allow the Beneficial Owner to conduct and/or settle all negotiations and litigation resulting from the Claim, if applicable in the name of the Custodian.
- (b) The Beneficial Owner must bear the cost of, and indemnifies the Custodian to the full extent permitted by law in respect of, dealing with the Claims, including the payment of the Custodian's reasonable costs and expenses of defending any such Claim.
- (c) If a Claim involves an allegation of fraud or negligence against the Custodian relating to the Assets or the provision of the services under this Agreement:
  - (i) the Custodian must promptly notify the Beneficial Owner in writing of any Claim of which the Custodian has notice, or becomes aware; and
  - (ii) the Custodian must promptly notify the Beneficial Owner in writing of the nature, quantum and progress of the Claim, the basis for the allegations made against the Custodian and the prospects of success of the Claim.

## 10.3 Exercise of rights

Where the Beneficial Owner authorises the Custodian to exercise voting rights, rights to take up preferential allocations or other similar rights in respect of the Asset, the Beneficial Owner must give the Custodian Proper Instructions no later than 3 Business Days prior to the relevant date for the exercise of the rights.

## 10.4 No knowledge of constituent documents

The Custodian expressly disclaims any knowledge of any constituent documents governing the Asset. The Beneficial Owner accepts and acknowledges this disclaimer.

### 10.5 Entitlement to income

Where the Custodian has not received income or payment in respect of the Asset, within 3 Business Days after the date it has been advised it is so entitled, or it would be paid, the Custodian must notify the Beneficial Owner.

### 10.6 Custodian not obliged to take action

The Custodian is not obliged to take action to recover the income or payment referred to in clause 10.5 or to compensate or reimburse the Beneficial Owner in respect of it unless requested to do so by the Beneficial Owner and is indemnified to its reasonable satisfaction for the cost of such action.

### 10.7 Entry into Contracts

- (a) The Custodian shall not be required to enter into contracts (including, without limitation, mortgages or leases) unless and until the contract includes a limitation of liability clause in a form acceptable to the Custodian.
- (b) The Custodian, upon receipt of a Proper Instruction from the Beneficial Owner, may grant Power of Attorney to the Beneficial Owner to do any things and sign any documents which the Custodian may by law do or sign, in relation to the Asset.

### 10.8 Limitation on Indemnity

Any indemnity contained in this clause 10 :

- (a) shall be limited to rights against the Asset, and the Custodian shall not be entitled to exercise its rights of recovery against any other asset or assets of the Beneficial Owner; and
- (b) does not extend to any Claim that arises out of the wrongful act or omission, negligence or default of the Custodian.

## 11. Power to delegate

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### 11.1 Attorneys

The Custodian may from time to time appoint one or more attorneys to act jointly or severally and for a specific transaction, a class of transactions, or generally in respect of the trust fund or the Asset. The attorney may be authorised to exercise any powers, authorities, duties or functions conferred on the Custodian by this document or by law whether or not the Custodian has disclosed that the Custodian is acting as a trustee.

### 11.2 Scope of power

Any power of attorney granted pursuant to this clause:

- (a) does not require the consent of any person; and
- (b) will remain valid and effectual for the period nominated by the Custodian or until revoked by the Custodian in its discretion.

## **12. Beneficial Owner's power to remove and appoint Custodian**

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### **12.1 Appointment and removal of Custodian**

Subject to this clause, the Beneficial Owner may at any time before acquiring legal title to the Asset :

- (a) by written notice to the Custodian remove that Custodian from office;
- (b) by deed appoint a new custodian; and
- (c) by deed appoint an additional custodian.

### **12.2 No vacancy**

No custodian may be removed from office other than simultaneously with the appointment of a new custodian in his/her place if the removal would cause the office of the custodian to become vacant.

### **12.3 Who may be appointed custodian**

Any person who is capable of being a trustee of a trust may be appointed a custodian in respect of the Asset whether or not that person is a resident of Australia.

### **12.4 Who may not be appointed custodian**

No person may be appointed as a custodian if any of the trusts, powers and provisions in this document would by virtue of the appointment be unenforceable or incapable of being exercised or taking effect or otherwise cause the Fund to be acting in contravention of the Regulatory Requirements.

### **12.5 Retirement of Custodian**

The Custodian may retire at any time by giving 21 days written notice to the Beneficial Owner. The notice will be taken to be given on receipt by the Beneficial Owner. If the custodian is the sole Custodian, the custodian's retirement will not take effect until a replacement custodian is appointed.

### **12.6 Office of Custodian vacated**

A custodian's appointment will be terminated:

- (a) in the case of a natural person, if the Custodian is of unsound mind, his/her person or estate is liable to be dealt with in any way under the law relating to mental health, he/she is bankrupt or makes any arrangement or composition with his/her creditors generally; or
- (b) in the case of a corporate custodian, if it goes into Liquidation.

**12.7 Vesting of Asset in new Custodian**

On retirement, removal or vacation of office the Custodian will:

- (a) take whatever action is necessary to vest the Asset in any new or continuing Custodian; and
- (b) deliver to the new or continuing Custodian all books, documents, records and other property relating to the Asset.

**12.8 Costs recouped from Fund**

The costs, charges and expenses of the retirement, replacement or appointment of a Custodian will be recouped from the Fund.

**13. Power to alter or vary**

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The Custodian may, with the consent of the Beneficial Owner, and will if directed by the Beneficial Owner from time to time until the whole of the Asset has vested absolutely in the Beneficial Owner, by resolution (oral or written) deed or deeds (revocable or irrevocable) alter, vary or absolutely revoke all or any of the trusts and powers set out in this document.

**14. Limited indemnity by, and liability of, Beneficial Owner**

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**14.1 Indemnity**

Subject to clause 14.3, the Beneficial Owner indemnifies, and must keep indemnified, the Custodian, its officers, employees, agents and representatives against all proceedings, claims, demands, damages, actions, reasonable amounts paid in settlement, reasonable costs and expenses, losses and liabilities of whatever nature (whether actual or contingent) suffered or incurred by or sustained or threatened against, the Custodian (including interest and legal fees and expenses on a full indemnity basis) arising out of, or in connection with:

- (a) the Custodian's proper observance of this Deed, and out of the Custodian holding the Asset in its name;
- (b) any transaction in relation to an Asset or the ownership or holding of any Asset;
- (c) there being insufficient funds available to the Custodian to meet the acquisition price of an Asset and all calls and demands for the payment of unpaid capital or portions in respect of them;
- (d) any Tax, brokerage, commissions, acquisition price and costs, penalties and other expenses arising out of any acquisition, holding or disposal of an Asset under this Agreement or the performance of its obligations under this Agreement and all costs and expenses incidental to any of the foregoing;
- (e) the Custodian acting or omitting to act in accordance with a Proper Instruction;
- (f) certification and reporting requirements, claims for exemption or refund, additions for late payment, interest, penalties and other expenses (including legal expenses) that may be assessed against the Custodian on account of the Beneficial Owner or the Asset;

- (g) any breach of this Deed by the Beneficial Owner or its officers, agents, employees, including without limitation any breach in connection with the Custodian's Confidential Information and any breach of a warranty, covenant, or obligation under this Agreement;
- (h) penalties, fines, compensation, penalties claims, rehabilitation or restoration, orders under any environmental issues or risks, environmental, heritage, planning or other law strictly or personally imposed on the Custodian as a result of it being the holder, legal owner, lessee or lessor of land or otherwise having an interest in land; or
- (i) the existence or suspected existence of any contamination or the actual or potential occurrence of pollution in, on, from or in connection with, any Asset at any time.

#### 14.2 **Enforcing right of indemnity**

The Custodian need not incur expenses or make payment before enforcing a right of indemnity under this Deed.

#### 14.3 **Limit of liability of Beneficial Owner**

Notwithstanding any other provision in this Deed or any principle of law:

- (a) despite any implied right to the contrary, the Custodian shall have no recourse against the Beneficial Owner or against any assets of the Beneficial Owner, except recourse to the Asset, in respect of any payment the Custodian has to make in respect of any loan or other financial accommodation secured against the Asset;
- (b) the liability of the Beneficial Owner shall, in so far as it relates to any Borrowing, be limited to rights against the Asset, and the Custodian shall not be entitled to exercise its rights against any other asset or assets of the Beneficial Owner; and
- (c) the Beneficial Owner will not be liable to the Custodian to the extent to which damage or loss results from or is caused by any breach of this Deed by the Custodian.

#### 14.4 **Liability of Custodian**

The Custodian indemnifies the Beneficial Owner for any claim, damage, expense, loss or liability arising in any way out of or in connection with this Deed to the extent that it directly results from a breach of this Deed, any misrepresentation, fraud, misconduct, willful default or negligence of the Custodian and its agents, officers and employees.

#### 14.5 **Audit**

The Beneficial Owner can, at all reasonable times and upon reasonable notice, inspect and audit the Custodian's records relating to the Beneficial Owner and the Asset. The Custodian must provide all reasonable access and assistance to any registered auditor engaged to conduct an audit in relation to the Beneficial Owner.

## **15. Payment of Liabilities**

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### **15.1 The Beneficial Owner must pay or reimburse the Custodian**

Subject to clause 15.2, the Beneficial Owner must pay or reimburse the Custodian for all Liabilities which are payable or expected to be incurred or payable by the Custodian in relation to the Asset or under this Deed.

### **15.2 Limit of Beneficial Owner's obligation**

The obligation of the Beneficial Owner under clause 15.1, in so far as it relates to any Borrowing, shall be limited to rights against the Asset, and the Custodian shall not be entitled to exercise its rights of recovery against any other asset or assets of the Beneficial Owner.

### **15.3 Notice of payment required**

The Custodian must advise the Beneficial Owner by written notice of the amount required to satisfy any:

- (a) Liabilities which are due or are expected to be due; and
- (b) Liabilities incurred by the Custodian in respect of the Asset.

### **15.4 Charge**

The Custodian may not take a charge, mortgage, lien or other encumbrance over, or in relation to, the Asset other than in accordance with the Beneficial Owner's Proper Instructions

## **16. Taxes**

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### **16.1 Beneficial Owner agrees to bear any Taxes**

The Beneficial Owner agrees to bear any Taxes payable or assessed in connection with this Deed including the delivery or transfer of the Assets to the Custodian to form part of the Assets or from the Custodian to any other person in accordance with this Deed.

### **16.2 Beneficial Owner must advise Custodian as to the amount of Taxes payable**

The Beneficial Owner must advise the Custodian as to the amount of any Taxes payable under clause 16.1 and is responsible for the correctness and accuracy of such advice.

## **17. Custodian representations and warranties**

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### **17.1 Representations and warranties**

The Custodian represents and warrants to the Beneficial Owner as at the date of this Deed and during the term of this Deed that:

- (a) it has all the power to enter into and perform this Deed and has obtained all necessary consents and corporate authorisations to enable it to do so;



- (b) the entry into and performance of this Deed by the Custodian does not constitute a breach of a term of its constitution or any obligation or default under any agreement or undertaking by which the Custodian is bound; and
- (c) it has power under its constitution to enter into, perform and comply with all its obligations under this Deed.

## **18. Beneficial Owner Representations and warranties**

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The Beneficial Owner represents and warrants to the Custodian as at the date of this Deed and during the term of this Deed that:

- (a) it has all the power to enter into and perform this Deed and has obtained all necessary consents and corporate authorisations to enable it to do so;
- (b) the entry into and performance of this Deed by the Beneficial Owner does not constitute a breach of a term of its constitution or any obligation or default under any agreement or undertaking by which the Beneficial Owner is bound;
- (c) all property transferred or delivered by the Beneficial Owner to the Custodian from time to time to form part of the Asset will be free from any mortgage, charge, lien, pledge, encumbrance or other security interests unless otherwise notified by the Beneficial Owner to the Custodian before the transfer or delivery;
- (d) it has power under its constitution to enter into, perform and comply with all its obligations under this Deed;
- (e) it has not breached any term of its constitution;
- (f) its entry into this Deed is for the benefit of, and in the interests of, the members of the Fund;
- (g) the proper performance of any Proper Instructions or other obligations of the Custodian will not cause the Beneficial Owner or Custodian to breach any law; and
- (h) if the Asset is real property:
  - (i) there is no known existing contamination or pollution;
  - (ii) there is no known significant risk of contamination or pollution;
  - (iii) the present and proposed use of the real property is not intended to result in contamination or pollution,

unless otherwise notified to the Custodian (such notification does not affect or limit the Custodian's rights under any other part of this clause 16 nor any other term or this Deed).

## **19. Beneficial Owner undertakings**

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The Beneficial Owner undertakes to the Custodian:

- (a) to notify the Custodian of the obligations imposed on the Custodian by the taxation law of the jurisdictions in which any property included in the Asset at any time is held by the Custodian pursuant to this Deed;
- (b) to provide the Custodian on request with any documents, information or instructions reasonably required by the Custodian to enable it to perform its obligations under this Deed or imposed by law, and to ensure that any such information will be accurate,
- (c) to immediately notify the Custodian in writing if it ceases or proposes to cease for any reason or at any time to be the sole Beneficial Owner of the Asset and will procure - that any new Beneficial Owner of the Asset executes in favour of the Custodian such covenants, deeds and other instruments which the Custodian reasonably requires provided that these are not more onerous than those required or obtained by the Custodian under or in relation to this Deed;
- (d) duly and punctually perform and observe its obligations and duties under its constitution;
- (e) notify the Custodian of any fact or circumstance within its knowledge which has given rise, or with the effluxion of time would give rise, to a breach by the Beneficial Owner of any material representation, undertaking or other provision contained in this Deed;
- (f) to comply with all Statutes and Requirements relating to:
  - (i) the Asset or anything or anyone in or on it; or
  - (ii) anything done or to be done or not to be done in, on or with the Asset or anything in or on it; and
- (g) in the event that the Asset is real property, to maintain, in the Custodian's name or in the joint names of the Custodian and the Beneficial Owner, adequate insurance cover over the Asset for all usual insurable risks, including public liability insurance.

## **20. Amendment**

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This Deed cannot be amended except in writing executed by each party.

## **21. Dispute resolution**

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### **21.1 Resolve disputes by meeting**

Any dispute in relation to this Deed must be sought to be resolved by meeting between officers of the Beneficial Owner and Custodian who have appropriate powers to deal with the dispute.

### **21.2 Either party may request meeting**

A meeting may be requested by either party and must be attended by the other at a mutually agreed time within two weeks of the initial request for the meeting.

### 21.3 Senior management involvement

In the absence of a resolution at the meeting or if there is a failure to arrange or have the meeting, then either party may request that more senior management deal with the dispute.

### 21.4 Resolution binding

A resolution of a dispute in accordance with this clause is (in the absence of manifest error) conclusive and binding on both parties.

## 22. Priority

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This document is at all times subject to the Regulatory Requirements. In the event of a conflict between the terms of this document and the Regulatory Requirements, the Regulatory Requirements shall prevail.

## 23. Notices

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### 23.1 Address

All notices, correspondence, communications (including Proper Instructions) sent or delivered under this Deed shall be sent or delivered to the street or postal addresses or facsimile number of the recipient specified in writing by the recipient from time to time.

### 23.2 Effective time

A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

### 23.3 When received

A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the third (or seventh, if posted to or from a place outside Australia) day after posting; and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

## 24. Severability

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Each part of this Deed is severable from the balance of this Deed and if any part of this Deed is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of this Deed.

## 25. Governing law

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This Deed shall be governed by and construed in accordance with the laws of Queensland. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland.

**26. Entire agreement**

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This Deed constitutes the complete and exclusive agreement between the parties.

**27. Assignment**

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The parties must not assign or purport to assign this Deed or their respective rights or interests under this Deed without the prior written consent of the other party (such consent shall not be unreasonably withheld). Provided always that either party may assign their rights without the approval of the other party and novate their obligations (to which the other party consents) to a related body corporate or where the assignment or novation results from or is incurred in connection with any corporate amalgamation or sale.

**28. Counterparts**

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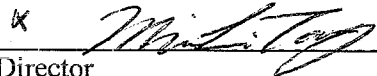
If this Deed is executed in counterparts, then each is deemed an original and together they constitute the one document.

EXECUTED as a Deed

EXECUTED by PENFOLD & TANG  
SUPER PTY LTD ACN 136 376 193 as  
trustee for the Penfold & Tang Superfund  
in accordance with s127 of the  
Corporations Act (Cth) 2001 in the  
presence of:


*x*   
\_\_\_\_\_  
Director

MARK W PENFOLD  
Name of office holder - please print


*x*   
\_\_\_\_\_  
Director

MIN LI TANG  
Name of office holder - please print

EXECUTED by PENFOLD & TANG  
IWT PTY LTD ACN 139 982 826  
in accordance with s127 of the  
Corporations Act (Cth) 2001 in the  
presence of:

*x*   
\_\_\_\_\_  
Director

MARK W PENFOLD  
Name of office holder - please print

*x*   
\_\_\_\_\_  
Director

MIN LI TANG  
Name of office holder - please print