

**This Deed of Variation** is made by

Rodney Mark Coles

Beverley Joy Coles

of 2 Roderick Street, Spalding, SA 5454 Australia

("Trustee")

**BACKGROUND:**

- A. The Superannuation Fund is evidenced by a deed ("**Trust Deed**") made on 15/06/1996.
- B. The Trust Deed was further amended on 19/12/2005 and 03/11/2007.
- C. The Trust Deed and the Superannuation Industry Supervision Legislation states that the Trustee has the power to revoke, add to and vary the trusts constituted by the Trust Deed subject to the terms set out in the Trust Deed.
- D. The Trust Deed's trust fund has not vested.
- E. The Trustee seeks to vary the Trust Deed from the date of this Deed of Variation and the parties to this Deed give their consent to the variation.

**THIS DEED STATES:**

**1. How does this Deed vary the Trust Deed?**

Subject to clauses 2, 3 and 4 of this Variation of Trust pursuant to the powers given to the Trustee by the Trust Deed the Trustee varies the Trust Deed from the date of this Deed of Variation:

- i. by replacing the terms of the Trust Deed and any variations with the terms contained in the enclosed Self Managed Superannuation Fund document marked as "Annexure A".

**2. What isn't varied in the Trust Deed?**

The term "Deed" includes this deed and all annexures and schedules to this deed.

The parties to this Deed have provided copies of this Deed and any annexures to all the members of the fund.

**3. Do we use the definitions in the Trust Deed?**

Unless the context otherwise requires the expressions contained in this Deed of Variation have the same meanings as in the Trust Deed.

**4. What if there is a conflict between this Deed of Variation and the Trust Deed?**

This Deed is supplemental to the Trust Deed. This Deed is, as far as it may, be read and have effect

to endorse the Trust Deed in all Australian jurisdictions.

If any of the terms of the Trust Deed are inconsistent with the terms of this Deed then the terms of this Deed prevail. However, this Deed in no way constitutes a resettlement of the Superannuation Fund or any part of the Trust, established by the Trust Deed. If anything in this Deed establishes a resettlement of the Superannuation Fund then the applicable words are read down so as not to constitute a resettlement.

**5. Protecting grandfathered structures and defined benefits**

**In house asset rules:** If any clause in this Deed adversely affects the grandfathering provisions for any structures or transactions that the fund has in place for the in-house asset rules as provided for in sections 71A to 71E of the Superannuation Industry (Supervision) Act 1993 then the offending words are read down so as not to adversely affect any such transactions or structures that are in place.

**Defined Benefit Pensions:** Further, this Deed is read down so as to preserve any payments of defined benefit pensions and any other pensions and payments. Any power to pay a defined benefit pension (under a previous deed) is preserved.

Should any inconsistency occur between the preserved provisions and the remaining provisions of this Deed, then the preserved provisions prevail.

**6. When does this Deed of Variation take effect?**



Unless otherwise stated in any minutes, this Deed of Variation takes effect on the date of this Deed of Variation.



**7. Who pays for this Trust Deed?**

The Trustee pays the cost of preparing, signing and stamping this Deed.

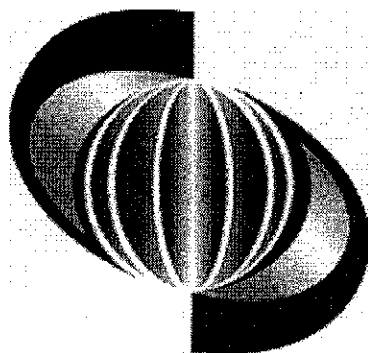
**THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

Signed, sealed and delivered as a Deed on 29 day of June 2011

Signed, sealed and delivered by Rodney Mark Coles	<input checked="" type="checkbox"/> 
in front of the person below being over 18 years of age and not involved with the contents of this document or related to any of the parties to this document	
Witness signature: (Australian citizen)	<input checked="" type="checkbox"/> 
Witness name: (please print)	<input checked="" type="checkbox"/> Hank LANGES
Witness address:	<input checked="" type="checkbox"/> Boundary Rd. Jamestown
Witness occupation:	<input checked="" type="checkbox"/> Retailer

Signed, sealed and delivered by Beverley Joy Coles	<input checked="" type="checkbox"/> 
in front of the person below being over 18 years of age and not involved with the contents of this document or related to any of the parties to this document	
Witness signature: (Australian citizen)	<input checked="" type="checkbox"/> 
Witness name: (please print)	<input checked="" type="checkbox"/> Hank LANGES
Witness address:	<input checked="" type="checkbox"/> Boundary Rd Jamestown
Witness occupation:	<input checked="" type="checkbox"/> Retailer

**Annexure "A"**



**LawCentral**  
**Legal Documents**

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**Coles Choice Meats Pty Ltd Mgt Superannuation  
Fund**

**Deed of Trust**

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**CIVIC LEGAL**

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## **Self Managed Superannuation - Amended Terms**

### **This Annexure is made by:**

Rodney Mark Coles

Beverley Joy Coles

of 2 Roderick Street, Spalding, SA 5454 Australia (“Trustee”) or (“Trustees”)

### **Declaration of Trust**

1. The Trustee varies an indefinitely continuing superannuation fund called Coles Choice Meats Pty Ltd Mgt Superannuation Fund evidenced by the Trust Deed. According to this Trust Deed the Trustee established a self managed superannuation fund as defined under the SIS Legislation to:

- (1) provide superannuation benefits to Members
  - (2) allow superannuation benefits by way of old-age pensions while the Trustees of the Fund are natural persons
  - (3) act for any other purposes as permitted from time to time by the SIS Legislation
2. The Trustee declares this trust and agrees to act as the trustee of the Fund.
3. The Trustee wishes to maintain the Fund as a complying superannuation fund under the *Income Tax Assessment Act*.
4. The Fund also has the flexibility of becoming another type of superannuation fund under the SIS Legislation.
5. The Trustee is aware that all new members to this fund must receive an up to date Product Disclosure Statement.

### **This document states**

#### **1. What do these Words mean?**

Unless a contrary intention appears:

- 1.1. “Actuary”** a practising member of the Institute of Actuaries of Australia or any other actuaries approved by the Relevant Requirements
- 1.2. “Allocation Date”** the dates the Trustee may from time to time determine, however, if a Trustee receives a contribution and the Relevant Requirements require the Trustee to allocate the contribution within a certain time period then the Allocation Date is no longer period than the Relevant Requirements require
- 1.3. “Allocation Period”** a period ending on an Allocation Date and starting the day after the previous Allocation Date. The first Allocation Period is such period as the Trustees determine

**1.4. "Approved Fund"** a superannuation fund, approved deposit fund, eligible roll-over fund, retirement savings account, small accounts holding reserve or other approved funds including a pension fund or annuity arrangement which can accept a transfer from the Fund of a Member's Benefit or is authorised to transfer a Member's Benefit to the Fund in compliance with the Relevant Requirements

**1.5. "Asset-test Exempt Pension"** a Benefit that is paid as a Pension that is exempt or excluded from the assets test under relevant provisions of the *Social Security Act 1991* (Cth) or the *Veterans Entitlement Act 1986* (Cth) (and any applicable regulations)

**1.6. "Associate"** a related person or entity as defined in the SIS Legislation or, at the Trustee's determination, such other meaning given in the Relevant Requirements

**1.7. "Benefit"** any amount paid or payable by the Fund to or in respect of a member (or any other person as permitted by the Relevant Requirements) as a lump-sum Benefit or Pension Benefit under this Deed

**1.8. "Child"** includes a step child, ex nuptial child, a legally adopted child, a person recognised by the Trustees as an adopted child and a child of a Member born within 10 months after the death of the Member

**1.9. "Complying Pension"** includes:

(a) any pension that the Trustee determines to be a complying pension; and

(b) unless the Trustee determines otherwise, a Pension permitted by the Relevant Requirements either in the past, currently or in the future including account-based pension, asset-test exempt pension, market-linked income stream, market linked pension, growth pension, defined benefit pension, lifetime pension, transition to retirement income stream, allocated pension, transition to retirement allocated pension, annuities, term and lifetime income stream

**1.10. "Complying Superannuation Fund"** a complying superannuation fund for the purposes of the *Income Tax Assessment Act* and the SIS Legislation

**1.11. "Corporate Trustee"** is a trading or financial corporation formed within the limits of the Commonwealth under the jurisdiction of the Commonwealth under section 51(xx) of the *Commonwealth Constitution* eligible to act as a trustee of a regulated superannuation fund according to the Relevant Requirements.

**1.12. "Date of Disablement"** the date a Member is accepted (as the case requires) as being Totally and Permanently Disabled or Totally and Temporarily Disabled under any Insurance providing benefits on disablement under which the Trustees may have insured the Member or if there is no such Insurance or if no such date can be ascertained, such date as the Trustees in their discretion may determine.

**1.13. "Deed"** the Trust Deed by which the Fund has been established as amended from time to time

**1.14. "Dependant"** of a Member includes:

- (a) any dependant as defined under the *Tax Laws Amendment (Simplified Superannuation) Act 2007*
- (b) the spouse of the Member
- (c) any Child of the Member at any age
- (d) any other person who, in the opinion of the Trustees, is wholly or partly financially dependent upon the Member
- (e) any dependant as defined under the *Income Tax Assessment Acts*
- (f) any dependant as defined under the SIS Legislation and this may include, as the law allows, relationships where there is a continuing mutual commitment to financial and emotional support
- (g) any other person that the Trustee states to be a dependant as legally allowable

**1.15. "Disbursements"** unless the Trustee determines otherwise:

- (a) the direct costs of establishing, administering, managing, operating and terminating the Fund; and
- (b) any administrative or insurance costs or Taxes which are or which relate to those direct costs

**1.16. "Eligible Fund"** a superannuation fund, an approved deposit fund, an eligible roll-over fund, a roll-over annuity or any like fund or annuity or any other entity that the Trustees determine as an Eligible Fund for which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not in the opinion of the Trustees, be in breach of the Relevant Requirements

**1.17. "Eligible Person"** a person who can contribute to and participate in a superannuation fund under the Relevant Requirements (including a Member's spouse, a non-Member's spouse and any other person as decided by the Trustee)

**1.18. "Employer"** the person by which a Member is for the time being employed

**1.19. "Financial Year":**

- (a) a year ending on 30 June or any part of such a year occurring at the commencement or termination of the Fund
- (b) any other period determined by the Trustees

**1.20. "Forgone Benefit"** that part of any account established for a Member that is not payable to or for a Member by virtue of this Deed, excluding any amount which is not payable to or for a Member by virtue of being preserved under the Relevant Requirements

**1.21. "Fund"** the superannuation fund established by deed known as Coles Choice Meats Pty



Ltd Mgt Superannuation Fund

**1.22. "Income Tax Assessment Act"** the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* as amended from time to time

**1.23. "Insurance"** any policy of insurance effected by the Trustees:

(a) to provide the whole or part of a death or Total and Permanent Disablement Benefit payable to or for a Member

(b) to provide the whole or part of a Total and Temporary Disablement Benefit payable to or for a Member

**1.24. "Insurer"** a person authorised to carry on life insurance business under the *Life Insurance Act 1945* or any other person authorised to carry on life insurance business or to issue an annuity in any State or Territory of Australia

**1.25. "Member"** a person admitted as a member under the terms of this Deed and recorded in the Schedule of Members and has not ceased to be a Member under this Deed

**1.26. "Normal Retirement Date"** a date as the Member and the Trustee may agree

**1.27. "Permitted Contributor"** includes:

(a) a Member

(b) an Employer

(c) an Associate of a Member or Employer

(d) any person, corporation, trust, institution, agency, government, government agency or other entity including a spouse, eligible spouse, the Federal Government, the Federal Government co-contributions, employer, member and any other person in any capacity

(e) other persons permitted to make contributions to the Fund under the Relevant Requirements

**1.28. "Pension"** a pension or annuity permitted by the Relevant Requirements

**1.29. "Reference Schedule"** the reference schedule attached to this Deed

**1.30. "Relevant Requirements"** the SIS Legislation and any other laws or legislation, or the requirements of the Responsible Authority or any other competent authority which must be satisfied so that:

(a) the Fund obtains concessional tax treatment

(b) the Fund remains a regulated superannuation fund

(c) the Employer or Member retains any entitlement to a tax deduction unless they

choose not to claim a tax deduction

(d) no dealing with or concerning the Fund gives rise to a fringe benefit which is taxable to an Employer unless the Employer chooses to incur a fringe benefits tax ("FBT") liability – the Trustee does not receive any non-cash Employer contributions (such as shares and property transferred *in specie*) unless the employer has first paid any FBT liability

(e) a Pension Benefit is an Asset-test Exempt Pension

(f) no penalty is imposed on the Trustee or directors of the Trustee under or by virtue of the Relevant Requirements

**1.31. "Responsible Authority"** the Australian Prudential Regulation Authority (and prior to 1 July 1998 includes a reference to the Insurance and Superannuation Commission) or the Australian Taxation Office, as the case may be, including the authorised officers of these bodies, or such other persons or bodies empowered to administer the Relevant Requirements

**1.32. "Review Date":**

(a) such date as the Trustees may from time to time nominate for either the Fund or a particular Member

(b) for a Member who first joins the Fund between Review Dates, the date the Member joined the Fund and then the Review Date described in paragraph (a) above

**1.33. "Review Period"** a period commencing on a Review Date and ceasing immediately prior to the next Review Date

**1.34. "SIS Legislation":**

(a) the *Tax Laws Amendment (Simplified Superannuation) Act 2007*

(b) the *Superannuation Industry (Supervision) Act 1993* ("SIS Act")

(c) the *Superannuation (Financial Assistance Funding) Levy Act 1993*

(d) the *Superannuation (Resolution of Complaints) Act 1993*

(e) the *Superannuation (Rolled-Over Benefits) Levy Act 1993*

(f) the *Superannuation Industry (Supervision) Consequential Amendments Act 1993*

(g) the *Superannuation Supervisory Levy Amendment Act 1993*

(h) the *Occupational Superannuation Standards Amendment Act 1993*

(i) and any regulations ("SIS Regulations") made under the above Acts

(j) and all other requirements whether legislative or administrative including:

A. any administrative guidelines issued by the Responsible Authority; or

B. statements by government advising changes and any proposed changes to the SIS Legislation,

with which the Fund must comply or in the opinion of the Trustees ought to comply to be a Complying Superannuation Fund or not to be in contravention or breach of the SIS Legislation

**1.35. "Superannuation Guarantee Charge"** a charge or tax imposed on employers for not making certain superannuation contributions

**1.36. "TAP"** term allocated pension including a market linked pension or growth pension

**1.37. "Taxes"** income tax (including any tax on the disposal of assets), withholding tax, stamp, financial institutions and other duties, and any other tax for this Deed or the Fund

**1.38. "Total and Permanent Disablement"** of a Member has:

(a) the meaning given to it (or any corresponding term) in any Insurance providing benefits for such disablement under which the Trustees have insured the Member; or

(b) if no meaning can be ascertained under paragraph (a), the meaning for the time being adopted by the Trustees in their discretion

and **"Totally and Permanently Disabled"** has a corresponding meaning

**1.39. "Total and Temporary Disablement"** of a Member has:

(a) the meaning given to it (or any corresponding term) in any Insurance providing benefits for such disablement under which the Trustees have insured the Member; or

(b) if no meaning can be ascertained under paragraph (a), the meaning for the time being adopted by the Trustees in their discretion

and **"Totally and Temporarily Disabled"** has a corresponding meaning

**1.40 "Trustee" or "Trustees"** the trustee or trustees for the time being of the Fund

**1.41. "Trustee Investments"** any investments in which trustees for the time being are authorised by the law of any State or Territory of the Commonwealth of Australia to invest trust moneys

**1.42.** Unless a contrary intention appears the following terms have the same meanings they have from time to time in the SIS Legislation:

**"allocated pension", "actuary", "annuity", "approved auditor", "approved deposit fund", "basic equal representation rules", "beneficiary", "civil**

penalty order”, “constitutional corporation”, “eligible roll-over fund”, “independent trustee”, “eligible spouse contributions”, “growth pensions”, “legal personal representative”, “mandated employer contributions”, “market-linked income streams”, “old age pension”, “pension”, “regulated superannuation fund”, “spouse”, “superannuation fund”

Unless a contrary intention appears:

1.43. if any part of the Deed is invalid, that does not affect the validity of the remainder of the Deed

1.44. a reference to the Deed or any other document includes any variation or replacement of them

1.45. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them

1.46. headings do not interpret the Deed

1.47. singular includes the plural

1.48. “person” includes a firm, a body corporate, an unincorporated association or an authority

## **2. What is the Fund’s Purpose?**

2.1. While the Trustee is not a Corporate Trustee, the sole or primary purpose of the Fund is the provision of old-age pensions to Members as required under the Relevant Requirements.

2.2. While the Trustee is a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Benefits to Members as required under the Relevant Requirements.

## **3. When Does the Fund Start?**

Unless the Trustee declares otherwise by minute, the Fund is deemed to have started when the notice of election to become a superannuation fund was lodged.

## **4. Who is Eligible To Be a Member?**

4.1. Unless the Trustee otherwise directs, an Eligible Person may apply to become a Member of the Fund upon making application in such form as the Trustee may from time to time prescribe or otherwise accept.

### **4.2. When does a person become a Member?**

An Eligible Person becomes a Member on the date the Trustees accepts the application for membership or a date the Trustee states otherwise.

### **4.3. Can the Trustee Require Information from Potential Members?**

Before admitting a Member, the Trustee may require the Eligible Person to provide any information or documents the Trustee considers relevant. A person seeking to become a member completes an application for membership.

**4.4. Can the Trustee Reject a Potential Member?**

The Trustees may reject an application for membership.

**4.5. Are Members Bound by this Deed?**

Each Member agrees to be bound by the Deed.

**4.6. When does a member stop being a Member?**

A person ceases to be a Member when:

- (a) all benefits which are or may be payable for the Member have been paid; or
- (b) a transfer is made to an Eligible Fund in satisfaction of all the Member's entitlement to benefits; or
- (c) the Member's entitlement to benefits is terminated.

If a person is disqualified for any reason from being a Member then the majority of Trustees can remove the person by simple vote.

**5. What type of Things can go into the Fund?**

**5.1. A Permitted Contributor may make contributions of:**

- (a) money; or
- (b) securities listed on a stock exchange in Australia and other SIS Regulation approved exchanges; or
- (c) other property and assets, including assets *in specie*

to the Fund on behalf of one or more Members with the consent of the Trustee subject to the Relevant Requirements.

**5.2. A Member ceases contributing if the Member ceases to be an Eligible Person.**

**5.3. Subject to the Relevant Requirements, the Trustee:**

- (a) may accept contributions from a Permitted Contributor;
- (b) may accept child contributions;
- (c) at the time of the contribution or after the contribution is made, may, at any time, refuse, reject, return, or otherwise deal with such contributions (whether excess

contributions, or otherwise) as the Trustee considers appropriate or wishes;

(d) unless there is a minute signed by the relevant Member to the express contrary, the Trustee is restricted from accepting all or part of a contribution if it causes the member to exceed a contribution cap (including concessional and non-concessional caps). If the Trustee does accept the contribution the trustee holds this amount (and any earnings) in a separate trust, not under the SIS Legislation, for the sole benefit of the relevant Member in their personal capacity. The member confirms that the amount is not counted as a contribution. The Trustee may return the amount to the member relying on this clause.

#### **5.4. The Trustees:**

- (a) repay any contributions accepted contrary to the Relevant Requirements (less any amounts paid out for expenses or Taxes for those contributions); and
- (b) in so repaying any contributions are entitled to (but are not liable or required to) pay any earnings or interest attributable to such contributions.

#### **5.5. Can the Trustee Deduct Tax and Costs from Contributions?**

The Trustees may deduct from any contribution or other payment made to the Fund:

- (a) any Taxes that are payable for it;
- (b) any expense of the Fund that is attributable to a Member, for whom such contribution or payment is being made.

### **6. Are all Contributions for the Purpose of the Fund?**

All amounts forming part of the Fund are held in trust by the Trustees. The contributions by and for a Member are applied to provide the benefits referred to in this Deed to or for the Member.

### **7. When does the Member get the Benefits?**

#### **7.1. When Are Benefits Payable?**

Benefits are payable to or for a Member:

- (a) on or after the Member's Normal Retirement Date; or
- (b) at any age and whether working full time or part time as permitted by the SIS Legislation; or
- (c) on death before the Member's Normal Retirement Date; or
- (d) in such other circumstances as are permitted or required by the Relevant Requirements.

### **7.2. What Does the Member have to prove to get the Benefits?**

- (a) The payment of any Benefit is subject to the persons claiming that Benefit producing such evidence, doing such acts and executing such documents as the Trustees reasonably require.
- (b) The Trustees in paying a Benefit may act on any proofs or presumptions they consider appropriate, even if they are of no legal effect.
- (c) The Trustees may postpone the payment of any Benefit until the requirements of this clause have been met to their satisfaction.
- (d) A Benefit, the payment of which is postponed pursuant to this clause, does not (unless the Trustees determine otherwise) accrue any interest or earnings for the period that the payment is postponed.

### **7.3. What Flexibility is there on how the Benefits are Paid?**

The Trustee may, subject to the Relevant Requirements, provide the following Benefits to or for a Member:

- (a) a lump-sum Benefit
- (b) an asset including an asset in specie;
- (c) a Complying Pension;
- (d) an annuity from an Approved Fund;
- (e) other pensions and Benefits as permitted by the Relevant Requirements; and
- (f) a combination of the above Benefits which may include more than one of each.

### **7.4. What is the Value of the Benefit?**

- (a) The value of a Benefit payable to or for a Member is ascertained with reference to the Member's interest and entitlement in the Fund as at the date or dates of the occurrence of the event or events that gave rise to the Benefit.
- (b) If the Trustees consider the payment of a lump sum Benefit has been unduly delayed, the Trustees in their sole discretion may add interest to the Benefit on the date of payment calculated, from the date the entitlement to the Benefit arose, at such rate or rates as they may determine.

### **7.5. What is your Minimum Benefit?**

Notwithstanding any other provision in this Deed, a Member's minimum benefits are as set out in the SIS Legislation.

### **7.6. Do I just get Money as a Benefit?**

Benefits are paid to Members either in money or, at the request of the Member, in any other form of property, subject to the Relevant Requirements.

#### **7.7. Compulsory Preservation of Benefits**

If the Trustees consider that all or any part of a Benefit are preserved to comply with the Relevant Requirements, the Trustee:

- (a) pays that part of the Benefit to an Eligible Fund whose governing rules require the preservation of such Benefit under the Relevant Requirements; or
- (b) retains that part of the Benefit, including earnings of the Fund, until the Relevant Requirements permit it to be paid; or
- (c) otherwise deals with such Benefit according to the Relevant Requirements.

#### **7.8. Can the Trustee retain Benefits?**

If a Member who is entitled to a Benefit requests deferral of payment, the Trustees may defer payment of all or part of that Benefit for as long as the Trustee determines, subject to the Relevant Requirements.

#### **7.9. Insurance of Benefits**

- (a) If the Trustees take out or increase Insurance, or seek to do so, for a Member's benefits, and:
  - (i) the Insurer does not accept the Member on its standard terms or on terms acceptable to the Trustees; or
  - (ii) the Insurer restricts the level or scope of Insurance;

the Trustees may modify the Member's benefits as they consider appropriate.

- (b) The Trustees are not required to pay to or for a Member that part of a Benefit which is insured or intended to be insured except to the extent that the Trustees have received the proceeds of any Insurance attributable to the Benefit.

#### **7.10. Adjustment of Benefit if Incomplete or Incorrect Information**

The Trustees may modify a Member's Benefits as they consider appropriate, if any information given to them for the Member is incomplete or incorrect.

#### **7.11. Legal Disability of Person and Bankruptcy**

If the Trustees form the opinion that a Member or other person to whom a Benefit would otherwise be payable is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with such Benefit, the Trustees may pay or apply the whole or part of any such Benefit in one or more of the following ways:



- (a) to any Dependant of the Member or other person;
- (b) for or towards the maintenance, education, advancement or otherwise for the Benefit of the Member or other person in such form and manner and subject to such terms and conditions as the Trustees think fit; and
- (c) without limiting the generality of paragraph (b) of this clause, to a person who appears to the Trustees to be a trustee, a parent or guardian or to have for the time being the care or custody of the Member or other person or to have the financial expenses of the care or custody of the Member or other person.

**IRRESPECTIVE OF THE ABOVE, at all times, while a Member is bankrupt:**

- (a) any increase of that bankrupt Member's pension amount requires the consent and approval of the Trustees. Where the Trustee is solely controlled by the bankrupt Member, the Trustee is restricted from increasing the pension amount
- (b) automatically, without reference to the bankrupt member, any pension (or similar product) is reduced to the minimum amount allowable at law
- (c) automatically and without reference to the bankrupt member, any allocated pension (or similar product) is reduced to the minimum pension allowable at law
- (d) the Member is unable to request the Trustees to commute a pension

**7.12. Unrestricted Non-Preserved Benefits**

A Member's unrestricted non-preserved benefits within the meaning of the SIS Legislation are only payable to the Member according to the other provisions of the Deed applicable to payment of benefits unless the Trustees in their sole discretion determine otherwise.

**7.13. Death Benefits & Binding Nominations**

- (a) Only on a form approved by the Trustee, a Member may provide the Trustee with a binding written nomination as to the payment of Benefits on a Member's death to the Member's estate or to persons so permitted under the Relevant Requirements.
- (b) Such a binding nomination may relate to the type, amount and proportions of different components of the Benefits to be paid upon a Member's death.
- (c) A Member may vary any such binding nomination at any time in writing prior to the Member's death, according to the Relevant Requirements.
- (d) The Trustee ensures that the instructions contained in the binding nomination are followed as required by the SIS Legislation.

**7.14. Death Benefits & Non-Binding Nominations**

- (a) A Member may provide the Trustee with a non-binding written nomination as to the preferred payment of Benefits on a Member's death to one or more of the Member's

Dependants or to the Member's legal personal representative, subject to the Relevant Requirements ("**Non-Binding Nominated Beneficiaries**").

(b) Where the Member has not made a binding nomination under the Relevant Requirements, the Trustee may make any determination relating to the type, amount and proportions of different components in any Benefit and pay a Member's Benefit on the Member's death to:

(i) The Member's Dependant;

(ii) The Member's legal personal representative (even though there are Member Dependents);

(iii) The Non-Binding Nominated Beneficiaries; or

(iv) A combination of (i) - (iii) above in the proportions that the Trustee, in its absolute discretion, determines.

(c) A Trustee is not bound to pay Benefits on a Member's death to the Non-Binding Nominated Beneficiaries.

#### **7.15. No Dependant, Legal Personal Representative**

(a) If after 12 months from the date of a Member's death, the Trustees are of the opinion (after reasonable enquiry) that the Member left no Dependents and a legal personal representative of the Member has not been appointed, the amount otherwise payable as a death Benefit is forfeited.

(b) If subsequently a legal personal representative is appointed or a Member's Dependant is found the Trustees may (in their discretion) pay the whole or part of the forfeited amount to the legal personal representative or a Member's Dependant.

#### **7.16. Total and Permanent Disablement Benefits**

(a) The Trustees (subject to this Deed) may pay a Total and Permanent Disablement Benefit to a Member or any one or more of the dependants. The payment is made as the Trustee sees fit.

(b) Such part of the Benefit as insured is paid on such terms as the Insurer may prescribe under any Insurance providing such part of the Benefit or as the Insurer may agree with the Trustees.

#### **7.17. Total and Temporary Disablement Benefits**

A Total and Temporary Disablement Benefit as insured is paid on the terms and conditions of the Insurance or as the Insurer may agree with the Trustees.

#### **7.18. Tax on Benefits**

The Trustees may deduct from any Benefit payable any Taxes that are payable for it.

### **7.19. Trustee Discharge**

The Trustee is discharged from all liability for a Benefit where it pays the Benefit in good faith to a person or another person, on behalf of the person, they believe is entitled to it, or according to this Deed.

### **7.20. Splitting and Flagging of Benefits**

(a) If a Member's benefit becomes subject to a payment split or a payment flag, then the Trustee gives to both the Member and the Member's spouse the required notice and information under the Relevant Requirements.

(b) The Trustee calculates the benefit for the Member and the Member's spouse according to the Relevant Requirements.

(c) The Trustee preserves the benefit for the Member and the Member's spouse under the terms of the Fund and as required by the Relevant Requirements.

(d) If either the Member or the Member's spouse requests the transfer of the benefits of the Member's spouse, then the Trustee transfers the benefit under the terms of the Fund and as permitted or required by the Relevant Requirements.

(e) The Trustee pays the benefit for the Member and the Member's spouse under the terms of the Fund and as permitted or required by the Relevant Requirements.

## **8. Pensions**

### **8.1. Pensions (other than Old Age Pensions)**

At the Member's request any Lump Sum Benefit can be used to provide a Complying Pension.

### **8.2. Terms of Old Age Pensions**

A Benefit required to be paid as an old age pension is to be paid on terms and conditions including:

(a) such provisions as the Trustees may determine necessary or advisable to ensure that there is no contravention of the Relevant Requirements and that the Fund is and will remain eligible to be a Complying Superannuation Fund; and

(b) such other provisions as the Trustees and the Member may agree or failing agreement as the Trustees may determine; and

(c) in instalments of such amounts as the Trustees determine.

### **8.3. Commutation of Old Age Pensions**

A Member or beneficiary may, subject to the provisions of the Relevant Requirements, commute an old age pension to a capital sum upon the following conditions:

(a) if the pension is commuted before or on the date of the first payment of the pension, it is to be commuted to a capital sum equal to a lump sum Benefit; and

(b) if the pension is commuted after the date the first instalment of the pension has fallen due for payment, the pension is commuted to a lump sum of such an amount as the Trustees may determine.

#### **8.4. Flexibility of Pensions**

At a Member's request the Trustee is eligible to:

(a) roll back or initiate an internal roll over into the Fund for any purpose; and

(b) allow a Member to stop any pension and then restart that pension, start a new pension or convert to accumulation mode (including converting an allocated pension or any pension to accumulation) for any purpose including cash flow, estate planning or other reasons.

### **9. Annuities**

**9.1.** If the Trustees are required to pay an old age pension or a Pension, the Trustees are absolutely empowered to provide such pensions by way of an annuity purchased by the Trustees in the name of the Member or in the name of the Member and one or more of the Member's Dependants. This is upon such terms as the Member and the Trustees may agree, subject to the Relevant Requirements.

**9.2.** Where the Member, Dependant or beneficiary is

(a) an infant; or

(b) in the Trustees' view, of unsound mind or incapable of managing their own affairs; or

(c) no agreement is reached as to the terms of an annuity.

then in all of these cases the Trustees, at their discretion, may determine the nature and terms of the annuity.

### **10. Forfeiture**

#### **10.1. Forfeited Benefits**

A Member forfeits, to the extent the Relevant Requirements permit, a contingent or prospective or current entitlement to a benefit if:

(a) the Trustees determine that the Member has attempted to assign, alienate or charge all or part of that benefit;

(b) the Member is declared mentally ill or the Member's affairs are liable to be dealt with under the laws relating to mental health; or

(c) the Member has no Dependant or legal personal representative under clause 7.15.

### **10.2. Application of Forfeited Benefits**

The Trustees may apply a forfeited Benefit for one or more of the Members and Dependants. This is as the Trustees determine. This is subject to the Relevant Requirements.

### **10.3. Forfeited Benefits Account**

(a) The Trustee credits to a Forfeited Benefits Account any Forgone Benefit which is not dealt with under this Deed and debits amounts applied under this Deed.

(b) The Trustees apply amounts in the Forfeited Benefits Account:

(i) to supplement benefits that all or some of the Members or their Dependants have rights to receive from the Fund; or

(ii) to provide additional benefits for all or some of the Members or their Dependants; or

(iii) for any other purpose the Trustees determine.

(c) Amounts in the Forfeited Benefits Account must be applied in a manner and within a period which satisfies the Relevant Requirements.

## **11. Transfers**

### **11.1. To Another Fund**

(a) If a Member or a beneficiary makes a written request, the Trustees may pay or transfer all or part of the Member's or beneficiary's interest and entitlement in the Fund to an Eligible Fund. However,

(i) the payment or transfer must be consistent with the Relevant Requirements;

(ii) the Trustees may not pay or transfer more than the amount requested by the Member or the beneficiary; and

(iii) the payment or transfer satisfies the Member's entitlement to any benefit for the amount so paid or transferred.

(b) The Trustees may pay or transfer the whole or part of any benefit or the interest or entitlement of any person in the Fund to another Eligible Fund or otherwise in circumstances permitted or required by the Relevant Requirements whether or not the person has requested or consented to such payment or transfer, and such payment or transfer satisfies the person's entitlement to any benefit for the amount so paid or transferred.

### **11.2. From Another Fund**

If a Member makes a written request, the Trustees:

- (a) may accept the transfer of assets from another Eligible Fund; and
- (b) where the transfer is made for the Member's interest or entitlement in the Eligible Fund, provide benefits to the Member pursuant to such transfer in the manner set forth in this Deed; and
- (c) where the transfer is not attributable to a Member's interest or entitlement in the Eligible Fund, the Trustee may treat the amount of such transfer in such manner as it considers equitable. This includes deeming the assets being so transferred as a Forgone Benefit under this Deed and applying them under this Deed.

However, any transfer must be permitted by the Relevant Requirements.

### **11.3. Spouse Contribution Splitting**

The Member may apply to the Trustee of the Fund to roll over, transfer or allot an amount of benefits, for the benefit of the Member's spouse (or any other person as permitted by the Relevant Requirements) (for the purposes of this clause "Spouse") ("Contribution Split"). Or, the Trustee may deal with such matters in any other way as allowed under the Relevant Requirements.

- (a) The Spouse in whose favour a Contribution Split is made need not be a member of the Fund. Nor is the Spouse required to become a member of the Fund.
- (b) A Contribution Split can be made either by:
  - (i) allowing a transfer or roll over (or any other method as permitted by the Relevant Requirements) to a different fund (of which the Spouse is a member or is to become a member); or
  - (ii) establishing an entitlement to benefits for the Spouse within the Fund.

However, any Contribution Split must be permitted by the Relevant Requirements.

## **12. Records and Audit**

### **12.1. Fund Records**

The Trustees must keep records for the Fund of Members, assets and liabilities, income and expenditure, and all other matters specified by the Relevant Requirements and retain them for the period specified by the Relevant Requirements.

### **12.2. Fund Auditor**

The Trustees must appoint an approved auditor for each Financial Year or as otherwise required by the Relevant Requirements to:

(a) audit the accounts and records of the Fund; and

(b) report in writing to the Trustees,

within the time specified by the Relevant Requirements.

### **12.3. Annual Accounts Required**

The Trustees must for each Financial Year, prepare an income and expenditure account and a statement of net assets of the Fund.

## **13. Accounts**

### **13.1. Nature of accounts and reserves**

The Trustees for the convenient and efficient operation and administration of the Fund may establish such accounts in the records of the Fund as they consider necessary or desirable. This may be to ensure the ability to pay liabilities and obligations, whether contingent or actual, as and when they fall due. These can be for any lawful purpose including, smoothing returns, advisory fees, accounting fees, taxes, surcharge liabilities, life and disabled insurance premiums, death and disability payments and any purposes set out in Australian Tax Offices' Superannuation Contributions Ruling 1999/1. Further, the Trustees are not restricted from allocating amounts either to or from such reserve accounts. The Trustees have the flexibility to allocate earnings of the Fund on a basis other than the Members' respective Fund balances. This flexibility includes the Trustee having the discretion to allocate such earnings having regard to account balances, specific investment portfolios and the like. The Trustee has the flexibility of crediting rate of investment returns to each Member. The Trustee can allocate such accounts and reserves upon a Member's death.

These accounts can be paid to either members or for paying the expenses of the fund. They include:

(a) an accumulation reserve account, an accumulation retirement account, a pension reserve account, investment reserve account (that can amongst other things, hold undistributed investment income and income above the Fund's required return), contributions reserve account (that can amongst other things hold unallocated contribution made by an employer on behalf of a group of employees), miscellaneous reserve accounts (that can amongst other things include pre 12 May 2004 forgone and forfeited benefits, plus expenses and other legal provisions);

(b) such reserve accounts or liability accounts as may assist the Trustee to identify the value of assets that may have been exchanged or segregated as either current pension assets, non-current pension assets or that are dealt with as a different sub-fund, segment or partition;

(c) such other accounts and reserves as the Trustee considers appropriate from time to time including, one or more contribution, miscellaneous and investment reserve accounts.

The Trustee is at liberty under section 55(6) SIS Act to defend against any loss or damage suffered by a Member because of these accounts and reserves where managed according to

section 52(g)(2) SIS Act.

### **13.2. Provision and Adjustments to Accounts**

(a) The Trustee may make provision or adjustments in the accounts for all Disbursements (including Taxes on unrealised gains, advance tax instalments and notional surcharge amounts), liabilities, tax credits, depreciation, amortisation or revaluations as the Trustee considers appropriate.

(b) The Trustee may alter, exchange and segregate current pension assets from non-current pension assets and deal with the Fund as different sub-funds, segments or partitions and account for them separately.

### **13.3. Debits and Credits to accounts**

The Trustees are to record in the accounts established by them in such proportions they determine to be appropriate or as required by the Rules applicable to any Member for whom such accounts may have been established:

- (a) as a credit, contributions paid to the Fund;
- (b) as a debit, any losses to the Fund;
- (c) as a credit, any profits and earnings of the Fund;
- (d) as a credit, proceeds of Insurance, except proceeds of Insurance that are otherwise payable to or for a Member on death, Total and Permanent Disablement, or Temporary Total Disablement;
- (e) as a debit, amounts to pay Taxes and other expenses, or amounts to provide for them;
- (f) as a credit, amounts no longer required to meet Taxes or expense liabilities;
- (g) as a debit, amounts to pay premiums for Insurance or the consideration for an annuity;
- (h) as a credit, amounts received from the Forfeited Benefits Account;
- (i) as a debit, amounts transferred to the Forfeited Benefits Account;
- (j) as a debit, amounts paid as benefits or transferred to other Eligible Funds; or
- (k) as a debit or a credit any other amounts for such matters or things as they consider appropriate.

### **13.4. Allocation Date**

On each Allocation Date, the Trustee adds to a Member's account all contributions for that Member, the Interim Fund Earning Rate or Fund Earning Rate and any other amounts



including allocating of reserves, subject to the Relevant Requirements.

### **13.5. Fund Earning Rate**

In regards to the Allocation Date, the Trustees may declare a Fund Earning Rate.

### **13.6. Interim Fund Earning Rate**

The Trustees, as they consider appropriate, may set an Interim Fund Earning Rate to be applied to the accounts of a Member as at the date when an amount becomes payable from the Fund, for the period since the last Allocation Date.

### **13.7. How are Fund Earning Rates to be Determined?**

(a) In determining a Fund Earning Rate, the Trustees comply with the Relevant Requirements and take into account:

- (i) the earnings of the Fund, including all income and realised and unrealised capital gains;
- (ii) the realised and unrealised losses and expenses of the Fund, including Taxes that are or may be incurred by the Trustees which is not debited to an account;
- (iii) any provisions established by the Trustees for Taxes and expenses;
- (iv) the appropriateness of averaging profits, earnings, losses and expenses over two or more Allocation Periods; and
- (v) such other matters the Trustees consider appropriate.

(b) A Fund Earning Rate or Interim Fund Earning Rate may be positive or negative.

### **13.8. How are Fund Earning Rates applied to accounts?**

(a) Where relevant, the Trustees may decide whether a Fund Earning Rate or Interim Fund Earning Rate is applied to accounts on daily balances, on average balances, or on some other basis.

(b) The Trustees may distribute the losses, profits and earnings of the Fund to the accounts at the applicable Fund Earning Rate or Interim Fund Earning Rate.

### **13.9. How do you average the Fund's earnings, losses and expenses?**

Where applicable, if the Trustees in determining a Fund Earning Rate decide to average the earnings, losses and expenses of the Fund over two or more Allocation Periods, the Trustees may establish an Earnings Averaging Account to or against which the Trustees may:

- (a) credit such amount as the Trustees may retain from the Fund's earnings; or
- (b) debit such amount as the Trustees may use to supplement the Fund's earnings.

## 14. Investments, Borrowings

(a) The Trustees may invest all or part of the money and other assets of the Fund in any manner in which they could if they were personally entitled as beneficial owners of those assets, under any circumstances and any terms, and in or through any business structure or any arrangement (including companies, joint ventures, partnerships and trusts - including unit, hybrid, family, discretionary) including:

- (i) in Insurance and any other type of insurance including Trauma
- (ii) in Trustee Investments
- (iii) in real property (including residential, commercial, industrial, retail - direct, listed or unlisted)
- (iv) any tangible property and chattels (such as vehicles, boats, furniture, jewellery, livestock, machinery, clothing, art, writings, household goods)
- (v) intangible personal property and choses in action (such as common funds, bills of exchange, negotiable instruments, securities and intangible assets)
- (vi) deposits with any bank or building society (and the power to open and close such accounts) or any other company partnership or person with or without security
- (vii) in shares, stocks, options, debentures, bonds, unsecured notes, securities, leases, mortgages, charges, hire purchase
- (viii) in units or sub-units of any unit trust including units in a pooled superannuation trust
- (ix) in options, hedging contracts, futures contracts, instalment warrants, derivatives, similar securities to the above and other financial instruments such as forex trading
- (x) investing in any asset using warrants and instalment warrants
- (xi) borrowing money under any circumstances, for any reason, including instalment warrant styled structures such as provided for under section 67(4A) SIS Act ("**Borrowed Moneys**") and applying the Borrowed Moneys for any purpose including the purchasing of any asset, under any circumstances (including through a trust, bare trust, warrant, instalment warrant or beneficially). Where the purchase has been made otherwise than beneficially, then the Trustee has the power to acquire the legal ownership of such asset (or replacement asset) at any time and the right to provide any lender with a loan on any conditions including a limited recourse loan (including a loan limited to rights relating to the original asset or the replacement asset)
- (xii) borrowing moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for any purpose, including the purposes of acquiring an asset (whether beneficially, legally or both). This is upon such terms with or without security or interest as the Trustee deems fit. Further, to give, or to authorise the giving of security by mortgage, charge (whether fixed or floating) or otherwise over any asset.

The Trustee acknowledges the rights of the mortgagee or chargee and their priorities according to the terms of any such agreements.

(xiii) an investment for only capital growth, pure income or a combination

(xiv) in other investments, which the Trustee considers on a case-by-case basis, such as investments in agribusiness

(b) The Trustees may dispose of, vary, transpose, replace or encumber investments or mix investments with investments of other people or trustees as if they were personally entitled to them as beneficial owners

(c) The Trustees invest in a manner which is consistent with the Relevant Requirements

(d) The Trustees may borrow money in a manner consistent with the Relevant Requirements

(e) The Trustees may only lend money to Members if it is consistent with the Relevant Requirements

## 15. What are the Trustee's Powers?

### 15.1. General

The Trustees may do anything they consider necessary to manage the Fund in an efficient and economical manner according to this Deed and to administer the Fund so as to comply with the Relevant Requirements, including:

(a) paying any costs, charges and Taxes relating to the Fund

(b) subject to the SIS Regulations, paying its own costs and the costs of the Members

(c) paying professionals (whether Members or Trustees or not) who are entitled to be paid fees for work done by themselves or their professional's firm on the same basis as if the professional was not a Trustee or a Member but employed as a professional

(d) paying for services and products supplied by individuals and companies even though such entities have a financial or other relationship with the Trustee or Member or a family member of the Trustee or Member (including holding positions of ownership and directorships), provided that such costs are no more than would be charged had the Trustee not been so related to the entity

(e) appointing persons to:

(i) perform administrative functions;

(ii) audit the Fund's accounts; and

(iii) prepare tax and any returns for the Responsible Authority, and to pay any expenses incurred for this.

- (f) conducting and settling legal proceedings;
- (g) entering contracts and executing deeds;
- (h) obtaining and acting on the advice of a barrister, solicitor, adviser, financial adviser, accountant, actuary or superannuation consultant and paying their fees;
- (i) giving receipts and discharges;
- (j) giving any guarantee or indemnity;
- (k) insuring any risks;
- (l) acting as an underwriter;
- (m) making rules for rounding off contributions and benefits;
- (n) providing for and transferring liability for any Taxes;
- (o) establish such reserves, reserve accounts, reserve accounts pursuant to section 115 of the SIS Act;
- (p) irrevocably electing that the Fund become a regulated superannuation fund;
- (q) determining the manner in which they execute, sign and endorse cheques, negotiable instruments, agreements, writings, contracts and documents of any kind whatsoever required in or about the affairs of the Fund and such method of execution is legally binding on the Trustees;
- (r) opening, operating, maintaining and closing bank accounts at such banks and financial institutions as the Trustees determine and operate upon any of such accounts in a manner determined by the Trustees from time to time;
- (s) entering into any transactions such as contemplated by section 67(4A) SIS Act and other instalment warrant style structures;
- (t) deal or transact with any Member or Associate in any way or capacity, irrespective of any conflict of interest, including purchasing, receiving, selling or transferring (in specie or otherwise) any asset;
- (u) generally to exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred. This is irrespective of whether:
  - 1. any person (including the Trustee, director and shareholder of a Trustee and related parties) has or may have a direct or personal interest in the mode or result of exercising such power or discretion
  - 2. such person may benefit directly or indirectly as a result of the exercise of any such power or discretion
  - 3. the personal interest may have or could have arisen including whether as trustee of any other settlement; in a personal capacity; a shareholder; director; member;

partner of any company; partnership; as a unitholder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever

This is notwithstanding that the Trustee for the time being is the sole Trustee.

### **15.2. Fund Administrator**

The Trustees may appoint a person to act as administrator of the Fund, to administer the Fund and maintain Fund records including the right and power to receive contributions and pay benefits and terminate a delegation in such manner and terms as they see fit.

### **15.3. Trustee can Delegate. One Trustee can operate bank account.**

The Trustees have power to:

- a. delegate the exercise of any of their powers, duties and discretions to any person and terminate a delegation in such manner and terms as they see fit. The Trustees may execute any powers of attorney or other instruments for any purpose. One Trustee acting alone is permitted to bind the other Trustees including the power to open, close and operate bank and other types of accounts
- b. appoint any person as custodian to hold legal title for any asset acquired or to be acquired by the Trustee in such terms as the trustee thinks fit

### **15.4. Trustee may Act on Authorisations**

The Trustees may treat an authorisation purported to be given by a Member as given by the Member.

### **15.5. Trustee interprets the rules - including reversionary pensions**

The Trustee in its absolute discretion may exercise or enforce any powers at any time. Similarly, the Trustee may refrain from exercising any powers. The Trustee's interpretation of this Deed is final. This discretion includes the power to pay a reversionary pension to a dependant on death, where the pension was initially set up as a non-reversionary pension. Further, if a member dies and another rule permits the Trustee to pay a reversionary pension under this rule, the Trustee may continue paying the relevant pension to any or all of the Member's Dependants and legal personal representative in proportions the Trustee decides after considering any relevant Benefit Nomination.

### **15.6. Discretions only to be exercised by Trustee**

No provision of this Deed, except to the extent that the SIS Legislation may provide, may permit a discretion under this Deed to be exercised by a person other than the Trustees and any such provision is to be read down, construed and interpreted in such a manner so as to be consistent with the provisions of the SIS Legislation.

## **16. Trustee**

### **16.1. Regulation of Trustees Proceedings**

The Trustees may, subject to the provisions and requirements of the SIS Legislation:

- (a) regulate their meetings as they see fit;
- (b) determine a quorum of Trustees;
- (c) act by way of resolution passed by two thirds of all the Trustees based on the weighted value of each Trustee's current contributions; and
- (d) appoint one of them to act as chairman of Trustees and replace the chairman whenever they think fit.

### **16.2. Written Resolutions**

A resolution in writing signed by all the Trustees has the same effect and validity as a resolution of the Trustees passed at a meeting of the Trustees at which a quorum is present.

### **16.3. Telephone Meetings**

A meeting of Trustees is held by telephone or other similar means if:

- (a) all Trustees are given written or oral notice of the meeting; and
- (b) such number of the Trustees as represents a quorum of Trustees take part in the meeting.

### **16.4. Minutes**

- (a) The Trustees keep minutes of their resolutions and proceedings in a book kept for that purpose and otherwise keep such records of their proceedings in such manner as provided for in the Relevant Requirements.
- (b) Minutes are evidence of the matters recorded in them if they are confirmed at the next Trustee meeting and signed by the chairman.

### **16.5. Trustee ceasing to be Trustee**

A Trustee holds office until:

- (a) retirement or resignation from office by giving notice in writing to other Trustees of the Fund;
- (b) disqualification by law from holding office or becomes a disqualified person within the meaning of the SIS Legislation;
- (c) the Trustee:
  - (i) dies;

(ii) becomes, in the opinion of the other Trustees, mentally or physically incapable of fulfilling the office of Trustee of the Fund;

(iii) is removed by the Responsible Authority pursuant to the provisions of the SIS Legislation; or

(iv) is precluded from being a Trustee in other circumstances prescribed by the SIS Legislation.

## **16.6. Appointment and Removal of Trustees**

The Trustees may from time to time:

(a) establish procedures which are consistent with the SIS Legislation for appointing and removing Trustees;

(b) publish those procedures in a way that makes Members aware of them;

(c) can remove any Member or Trustee by a resolution passed by two thirds of all the Members based on the weighted value of each Member's current total contributions in this Fund; and

(d) honorary trustees and non-contributory trustees can be removed unilaterally by the contributory trustees or a simple majority of contributory trustees.

## **17. Liability and Indemnity**

### **17.1. Trustee not under Personal Liability**

The Trustees are only liable for:

(a) failing to act honestly in a matter concerning the Fund; or

(b) wilfully or recklessly failing to exercise, for a matter affecting the Fund, the degree of care and diligence that the Trustees were required to exercise; or

(c) a monetary penalty under a civil penalty order.

### **17.2. Trustee Indemnity**

Subject to the SIS Legislation excluding or limiting any right to an indemnity against liabilities incurred by the Trustees, the Trustees and past Trustee or any of them are indemnified out of the assets of the Fund for any liability incurred while acting as Trustees of the Fund.

### **17.3. Trustee right to seek advice**

The Trustees may seek advice from any person for any matter relating to the performance of the duties or the exercise of the powers of the Trustees. The Trustees are entitled to indemnify themselves out of the assets of the Fund for the cost of obtaining such advice.

## **18. Amendment of Deed**

**18.1.** The Trustees may by deed, resolution or minute amend the Deed (either in writing or verbally). This is provided that no amendment reduces a Member's accrued benefits or imposes any increase in liability on a Member without the Member's consent.

**18.2.** Any addition, repeal, amendment or alteration is effective from the date (if any) specified for that purpose in such deed or resolution or (in the absence of a specified effective date) the date on which the resolution was made or the deed is executed.

**18.3.** The Trustees must promptly notify each Member of the nature and purpose of any such addition or alteration and of the effect (if any) which such addition or alteration has on the Member's entitlements under the Fund.

## **19. Expenses of the Fund**

Fund expenses are payable from the Fund and may to the extent the Trustees consider it equitable be debited to the account established for a Member according to the provisions of this Deed.

## **20. General Administration**

**20.1.** A Member gives the Trustees any information or documents the Trustees request to assist them in administering the Fund.

**20.2.** The Fund and the Deed are governed by the law of the state of the Trustee's address stated at the beginning of this Deed.

### **20.3. Providing Information**

The Trustees provide any information required by the Relevant Requirements to a Member or any other relevant person.

### **20.4. Notices**

Any notice or other written communication in connection with the Fund is given to a person if it is:

(a) handed to the person;

(b) delivered to the person's last known address; or

(c) posted by ordinary post from within Australia to the person's last known address, in which case it is taken to be received on the third business day after posting.

## **21. Termination**

### **21.1. When Fund Terminates**

The Fund is to terminate if:



(a) the Trustees give written notice to a Member requiring the termination of the Fund;  
or

(b) the Relevant Requirements require the Fund to be terminated; and

as soon as practicable thereafter the Trustees must, subject to the Relevant Requirements:

(c) determine a termination date;

(d) notify the Member that the Fund has terminated from the termination date;

(e) take reasonable steps to get in any contributions owing by the Member at the termination date; and

(f) must not accept any other contributions.

### **21.2. Termination Date is Allocation Date**

To the extent that the Trustees consider it equitable, the Trustees allocate earnings or losses to accounts as at the termination date and such other date or dates as the Trustees consider appropriate.

### **21.3. How Assets are to be Applied**

The Trustees must, subject to the Relevant Requirements, apply assets in the following priority:

(a) in paying the costs of administering and winding up the Fund;

(b) in paying or transferring Members' benefits according to this Deed;

(c) in paying any balance to Members, Dependants, former Members, deceased Members' Dependants or legal personal representative in proportions the Trustees in their discretion determine is appropriate.

## **22. Complying with SIS**

### **22.1. SIS Legislation to Prevail over Deed Provisions**

If there is a conflict or inconsistency between the provisions of this Deed and the SIS Legislation, the SIS Legislation prevails. Further, any such provision in this Deed is read down, construed and interpreted by the Trustees in such a manner so as to give effect to the SIS Legislation and to enable the Fund to be operated in a manner that is consistent with the SIS Legislation. Further, where there is a non-mandatory change in the Relevant Requirements and SIS Legislation, beneficial to the Members, then this Deed is taken to be so amended so as to take advantage of these non-mandatory changes.

### **22.2. Power to Act according to SIS Legislation**

(a) The Trustees have the power to do all acts and things or omit to do such acts and

things as they consider necessary, desirable or expedient for the Fund to be operated and administered according to the SIS Legislation and to be a Complying Superannuation Fund and for the Trustees, Members, and beneficiaries not to be in contravention or, in the opinion of the Trustees, any possible or potential contravention of the SIS Legislation.

(b) The powers conferred upon the Trustees under this Deed, without limiting the generality of such powers, include the right to administer and operate the Fund so that:

(i) the Fund is operated solely for one or more of the core and ancillary purposes specified in the SIS Legislation;

(ii) the Fund is operated to comply with any standards prescribed under the SIS Legislation which are applicable to the Fund;

(iii) the Trustees are entitled to provide the Responsible Authority with such returns and information as the SIS Legislation or the Responsible Authority may require;

(iv) the Trustees may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Responsible Authority;

(v) the Trustees may disclose to the Responsible Authority such event, omission or thing that the SIS Legislation may require to be disclosed to the Responsible Authority and seek the advice, ruling or direction of the Responsible Authority as they consider necessary;

(vi) the Trustees pay from the Fund any levy or charge imposed upon the Fund under the SIS Legislation;

(vii) the Trustees seek from the Responsible Authority any exemption or modification of the provisions of the SIS Legislation for their application to the Fund; and

(viii) the Trustees may pay a Member's or a beneficiary's benefits or interest in the Fund in the circumstances prescribed by the SIS Legislation to the Responsible Authority or an eligible roll-over fund even if no claim for such a benefit has been made by or for the Member or beneficiary.

### **22.3. Trustee not to be in breach of Trust**

(a) The Trustee is taken to have not contravened the Deed or be in breach of trust if in giving effect to the Deed it:

(i) construes or interprets this Deed

(ii) does such acts or things

(iii) omits to do such acts or things

which might otherwise contravene this Deed or be in breach of trust but which the Trustee considers necessary, desirable or expedient to avoid a contravention of the SIS Legislation.

(b) The Trustee is not taken to contravene this Deed or be in breach of trust if it does anything or omits to do anything that is in contravention of the SIS Legislation if:

(i) the Trustees rectify the contravention within such period as may be allowed by the SIS Legislation or within such further period as the Responsible Authority allows; or

(ii) the Responsible Authority notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

#### **22.4. Trustee not subject to Direction**

Except to the extent permitted by the SIS Legislation, the Trustees in the exercise of their powers under this Deed are not to be subject to the direction of any other person.

#### **22.5. SIS Covenants and Requirements**

(a) Notwithstanding anything in this Deed: SIS Legislation required to be in this Deed is deemed included.

(b) If the SIS Legislation or the Responsible Authority no longer requires any such covenant or requirement to be so included, then that covenant or requirement ceases to be included.

(c) If any covenant or requirement (or its operation) under the SIS Legislation is modified then the Trustees are only required to comply with the covenant or requirement as modified.

(d) The Trustees are not taken to be in contravention of this Deed or in breach of trust if the Trustees do or omit to do anything which is in contravention of such a covenant or requirement if the contravention is waived by the Responsible Authority.

### **23. Expenses and Taxes**

The Trustees for any potential or actual expenses or taxation liability of the Fund, or of any Member, Dependant, beneficiary or person claiming through them are empowered to:

**23.1.** establish such reserves, reserve accounts, reserve accounts including those pursuant to the SIS Act and provisions as they consider necessary or desirable to provide for the payment of such expenses or taxation liability;

**23.2.** deduct from any contribution or other amount paid to the Fund, any benefit or other payment made from the Fund or the interest and entitlement of any Member, Dependant, beneficiary or any person claiming through them such amount as they consider equitable to establish and maintain such provisions and reserves;

23.3. pay any such expense or Taxes as and when it becomes payable out of the reserves and provisions and, if necessary, out of the other assets of the Fund and for the purposes of such payment realise the assets of the Fund;

23.4. not be required to make any retrospective adjustments in the event that any expense or Taxes becomes payable for a different period or periods other than that for which the provisions and reserves were established or if the taxation provisions and reserves prove excessive or unnecessary and in such cases the Trustees are entitled to apply the amount of the unnecessary or excessive provisions and reserves as they may decide including:

(a) allocating such amount to any existing reserve or provision or future reserve or provision for Taxes or expenses for which it was established or to any existing or future reserve or provision for any other expense or Taxes; and

(b) crediting any account established in the records of the Fund or the interest or entitlement of any Member, Dependant or person claiming through them; and

23.5. deal with any tax deductions, credits and rebates attributable to the Fund as and when they arise on such basis as the Trustees decide including offsetting them against any taxation reserves and provisions notwithstanding the period or periods to which such tax deductions, credits and rebates are attributable or the date they arise or are received.

#### **24. Insurance against Fund losses**

The Trustees may in their discretion effect or take out insurance against:

(a) any liability which arises against a Trustee, Member or the Fund;

(b) any losses or damages which the Fund, a Trustee or Member or may suffer or incur;

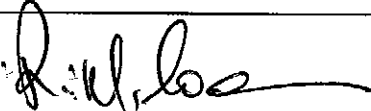

as a result of or arising from any act or omission of the Trustee or any person to whom the Trustees may have delegated their powers duties and discretions or any servant, agent or employer of the Trustees or any contractor (including persons acting in any professional role), Fund administrator, other administrator, custodian or other person or body engaged by the Trustees for the purposes of the Fund.

**THIS CONCLUDES ANNEXURE "A"**

# Schedule of Members of Coles Choice Meats Pty Ltd Mgt Superannuation Fund

from time to time

(a Self Managed Superannuation Fund can never have more than 4 members at one time)

Member	Date Entered	Date Exited
	On date of Acceptance by the Trustee	
	On date of Acceptance by the Trustee	
	On date of Acceptance by the Trustee	
	On date of Acceptance by the Trustee	