

NO DUTY PAYABLE

Comptroller of Stamp Duties,
Queensland.

John Wager 1/6/95

- TRUST DEED -

The Nickmont

Superannuation Fund

THIS DEED is made the *31st* day of *May*, 1995.

BETWEEN:

Nickmont Pty. Ltd.
c/- E.H. Larmar & Co
Level 26 240 Queen Street
Brisbane Qld 4000

(hereinafter called the "Founder" and "Principal Employer")

AND:

Dr Mark Laurence Dal Pra & Mrs Marina Dal Pra
1965a Logan Road
Upper Mount Gravatt Qld 4122

(hereinafter called the "Trustee")

WHEREAS: It is the desire of the Founder to establish an indefinitely continuing superannuation fund for the sole purpose of enabling Members (and, where appropriate, an Employer of a Member) to:

- (i) make provision for retirement benefits by way of old age pensions as defined in the Superannuation Industry (Supervision) Act 1993, in respect of Members (referred to in this Deed as the "Primary Purpose");
- (ii) make provision, as permitted under the Deed, for benefits payable to Members as a result of Disablement or to Dependants in the event of death, such provision being ancillary to the Primary Purpose.

NOW THIS DEED WITNESSETH that:

- I The Founder hereby establishes a fund (hereinafter called the "Fund") referred to and named as above and which is deemed to have commenced on the above date.
- II The Founder and the Trustee covenant to perform and observe the agreements, covenants, trust stipulations and conditions of this deed.
- III The Fund shall at all times be operated to meet the Primary Purpose as stated above or shall maintain a corporate trustee in order to comply at all times as a regulated fund under the provisions of the Superannuation Industry (Supervision) Act 1993, as may be amended from time to time.
- IV The term Regulations defined herein shall specifically include the Superannuation Industry (Supervision) Act 1993, as may be amended from time to time.

AND the parties hereto DECLARE as follows:

C1...DEFINITIONS AND GOVERNING PRINCIPLES

C1.1 Definitions. In this Deed unless the context otherwise requires:

'Act' means any Act dealing with or regulating the operation of superannuation funds.

'Auditor' means a registered company auditor or such other person as meets the requirements of a Relevant Authority, not being a person or firm acting as Trustee.

'Beneficiary' means a person presently and absolutely entitled to receive a Benefit at the relevant time including a Pensioner.

'Benefit' means any amount paid or payable by the Trustee out of the Fund pursuant to the Deed to or in respect of a Member.

'Clause' means a clause or sub-clause of the Deed and Rule has a corresponding meaning.

'Contributions' means payments to the Fund by Members (and Employers) pursuant to the Deed.

'Deed' means these presents and any authorised alteration, additions, amendments and modifications thereto, and includes the Rules and Schedule hereto.

'Dependant' in relation to a Member or former Member means:

- (i) the wife or husband (or defacto wife or husband) of the Member or the widow or widower of a deceased Member;
- (ii) any child of the Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his child; and
- (iii) any other person who, in the opinion of the Trustee, was substantially financially dependent on the Member at the relevant time.

'Directors' means the directors or board of management for the time being of an Employer, the Founder or of the Trustee, as the case requires.

'Disablement' means in respect of a Member his physical or mental disablement caused through bodily injury, illness, disease, infirmity or accident (none of which has been incurred or inflicted for the purposes of obtaining a Benefit) and for which the Trustee has obtained a certificate signed by two registered medical practitioners that in their opinion the Member is unlikely ever to be able to work again in a job for which that Member is reasonably qualified by education, training or experience.

'Employee' means a person in the employment of an Employer and who is:

- (i) a Director of that Employer;
- (ii) classified by his Employer as a permanent employee; or
- (iii) declared by the Founder to be an Employee for the purposes of the Deed;

'Employee Financed Benefit' means -

- (a) In the case of Members covered under Rules 1: the Member's own Contributions accumulated with interest at the Net Earning Rate of the Fund;
- (b) In the case of Members covered under Rules 2: the result of the following product:

$$\text{Member's Contribution rate} \times \text{Fund Membership} \times \text{Highest Average Salary}$$

such product being adjusted to take into account the Fund Membership only for the time during which a Member has actually made Contributions and the Contribution rate (expressed as a percentage of Salary) which has applied from time to time.

provided that the application of the above methods may be modified by the Trustee in order to properly comply with the requirements of any Regulations.

'Employer' means the Employer of a Member.

'Founder' means the person or party named as the founder in the preamble hereto, or as subsequently appointed in accordance with the terms of the Deed.

'Fund Membership' means the exact period between the date of joining the Fund and the date at which a relevant calculation is to be made.

'Fund Year' means a period of twelve months ending on the thirtieth day of June, or such other date as the Trustee from time to time may determine.

'Highest Average Salary' means the highest average Salary of a Member over any three consecutive Fund Years prior to ceasing to be a Member or such other amount as permitted by a Relevant Authority for the determination of superannuation contributions and/or benefits.

'Member' means a person in Remunerative Employment who has been accepted by the Trustee as a Member of the Fund.

'Member's Accumulated Contributions' means the Employee Financed Benefit relevant to a particular set of Rules.

'Net Earning Rate of the Fund' means the rate of interest earned on the Fund assets (or on the assets held for a particular set of Rules, as the case requires) for a particular Fund Year and, as the Trustee may decide, after allowing for appropriate administration costs and/or the averaging of such returns on a basis acceptable to a Relevant Authority.

'Normal Retirement Age' means the age of 65 years or such other age agreed to by the Member and as permitted by a Relevant Authority.

'Participating Employer' means any associated Employer admitted as a Participating Employer pursuant to Clause 10.1 hereof.

'Pension' means a Benefit payable at a yearly rate by instalments, (such payments meeting the standards in any Regulations) and "Pensioner" means a person receiving a Pension.

'Preservation Age' means such age as specified in any Regulations under which a Member is not entitled to take a Benefit in cash, but where such Benefit must be Preserved.

'Preserved' or 'Preservation' means a requirement under any Regulation that payment of a particular Benefit under the Fund must be deferred until one of the following conditions is satisfied in respect of the Member, namely:-

- (i) the Member's cessation of Remunerative Employment, subsequent to his attaining the Preservation Age;
- (ii) the Member's retirement caused by the Member's Disablement;
- (iii) the death of the Member;
- (iv) the Member's permanent departure from Australia;
- (v) such other circumstances as may be specified from time to time in any Regulations;

and 'Preserved Benefit' means a Benefit subject to such requirements.

"Primary Purpose" means the main purpose for which the Fund was established as set out in the preamble hereto, provided that the Primary Purpose can, at a later time, be altered by minute with the consent of the Founder to accord with any Regulations so that the Fund is able to maintain its complying or concessionary tax status.

'Principal Employer', where applicable, means the Employer named in the preamble hereto or as subsequently appointed in accordance with the terms of the Deed.

'Principal Member', where applicable, means the Member named in the preamble hereto or as subsequently appointed in accordance with the terms of the Deed.

'Regulations' means any Act of Parliament, and/or regulations issued under an Act, dealing with superannuation

and any guidelines made by a Relevant Authority relating to superannuation.

'Relevant Authority' means the Australian Taxation Office, the Insurance and Superannuation Commissioner or any other government authority empowered to act or set guidelines in the area of superannuation.

'Remunerative Employment' means the employment of a member in any business, trade, profession, vocation, calling, undertaking, occupation or employment from which he derives money as payment, reward, remuneration or profit.

'Rules' means the Rules attached to the Deed and, in particular, as specified in Clause C2.4.

'Salary' means, in relation to a Member, an amount made up of the member's total income from earnings, salaries, wages, commissions, fees, bonuses, allowances, gratuities, and the net income from a business carried on by the Member either alone or in partnership with another person provided that the inclusion of any or all of those items is in accord with the requirements of any Relevant Authority.

'Superannuation Arrangement' means any superannuation fund, approved deposit fund, eligible annuity or such other plan referred to in any Regulations.

'Vested Benefit' means any part of a Member's Benefit arising from Contributions to the Fund, or to a previous superannuation fund, which is required by any Regulations to be vested in and payable to a Member on cessation of Remunerative Employment (subject to any Preservation requirements).

'Vesting Factor' means the factor shown in the Schedule to this Deed against the appropriate entry for period of Fund Membership.

C1.2 Plural and gender of words. In the Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other genders and words importing the singular number shall include the plural number and vice versa.

C1.3 Headings to Clauses. The headings in the Deed are for convenience and reference only and shall not affect its interpretation.

C1.4 Defined words. For convenience, the first letters of words and expressions defined in the Deed (or the Rules) are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

C1.5 Employer's powers not prejudiced. Nothing in the Deed shall affect the powers of an Employer with regard to the terms of employment or dismissal of an Employee.

C1.6 Exercise of rights under the Deed. All powers and rights conferred on the Founder, an Employer or the Trustee under the Deed may be fully exercised for or on behalf of such Founder, Employer or Trustee by resolution of its Directors or by any person or persons having the written authorisation of such Directors to so act on their behalf.

C1.7 Deed governed by State Laws. The Deed shall be governed in accordance with the laws of the State of the Commonwealth of Australia in which the Deed is executed.

C1.8 Arbitration. If any questions or dispute shall arise with respect to the Fund or to the construction or meaning of the Deed, and if the Trustee so requires, the question or dispute shall be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement to an arbitrator appointed pursuant to the provisions of the Arbitration Act in the State in which the Deed was executed. If the Trustee requires any question or dispute to be referred pursuant to this Clause, no right of action shall accrue in respect thereof until the question or dispute has been adjudicated upon by the arbitrator.

C2.....CONSTITUTION OF THE FUND

C2.1 Moneys payable to Fund. The Fund shall consist of all cash, investments and other property for the time being held by or on account of the Trustee pursuant to this Deed.

C2.2 Accounts of the Fund. For the purposes of managing, administering and applying the Fund, the Trustee may if it sees fit:

- (i) Establish and maintain separate parts of the Fund for the purpose of distinguishing between different classes or groups of Members and/or Beneficiaries;
- (ii) Establish and maintain separate accounts and/or investments in respect of any part of the Fund;
- (iii) Establish and maintain separate accounts and/or investments in respect of each or any Member and/or Beneficiary;
- (iv) Transfer Members and assets between parts of the Fund or different Rules as it may determine;
- (v) Establish and maintain a taxation reserve account to which shall be credited amounts set aside by the Trustee to pay income tax payable in respect of Contributions to the Fund and earnings of the Fund and to which shall be debited income tax paid.

C2.3 Compliance with Regulations. The Trustee shall comply with any Regulations relating to the maintenance of accounting and other records as are required to be kept and the preparation of reports therefrom.

C2.4 Rules. Separate Parts of the Fund may be maintained relating to each different set of Rules under which Members may be covered for benefit payments, such Rules being as follows:

- Rules 1: Benefits determined on an allocated basis from an accumulation of contributions.
- Rules 2: Defined benefits with the normal retirement benefit being determined in relation to membership period and Salary (or some variation thereof).

Unless otherwise decided by the Founder and advised to the Trustee in writing, Members shall receive benefits under Rules 1.

C3....TRUSTEE

C3.1 Trusteeship. Subject to compliance with any Regulations and the provisions of Clause C3.5, the following general provisions shall relate to the Trustee:-

- (a) Removal and appointment of Trustee. The Founder shall have the right to appoint or remove any Trustee by notice given in writing.
- (b) Vacancy in office. The office of a Trustee shall become vacant if the Trustee:
 - (i) is removed from office by the Founder;
 - (ii) resigns from his office by notice in writing to the Founder;
 - (iii) is disqualified from office by operation of law;
 - (iv) being an individual, dies; or becomes bankrupt or makes an assignment to or composition with his creditors; or is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
 - (v) being a company, passes a resolution, or receives a summons or a petition is presented for the company to be wound up or liquidated or a receiver of its assets is appointed,

and upon such vacancy the Founder shall as soon as possible appoint another Trustee. Where the Founder, being a sole individual, dies the Members shall by simple voting majority appoint one or more of themselves as the Founder.

- (c) Continuity of office. A trustee, on ceasing to be a Trustee, shall do everything necessary to transfer the Fund to the new Trustee and shall deliver all Fund records and other books to the remaining or new Trustee.

(d) Founder as Trustee. The Founder may act as Trustee.

C3.2 Powers of Trustee. The Trustee shall, in its sole and absolute discretion, do all acts and things as it considers necessary or expedient for the proper administration, maintenance and preservation of the Fund and in the performance of its obligations under the Deed. Appropriate minutes shall be maintained by the Trustee to record its decisions, and any costs associated with any decision made by the Trustee shall be a proper outgoing of the Fund.

C3.3 Remuneration of Trustee. The Trustee is entitled to receive reasonable remuneration from the Fund in respect of its office.

C3.4 Indemnity of Trustee. The Trustee shall, subject to any Regulations, be indemnified out of the Fund against all liabilities incurred by it in the exercise of its duties other than in the case of fraud or wilful misconduct.

C3.5 Member Trustees.

(a) If any Regulation requires that there be specific trustees representing the Members and/or Employers there shall, in addition to any independent Trustee appointed pursuant to Clause C3.6 hereof, be such other trustees appointed in accordance with the requirements of any Regulations.

(b) Any additional trustees appointed under this Clause shall cease to be a Trustee on the earlier of the day on which he ceases to be a Member (or, where applicable, the day that he ceases to be an Employee) or on the happening of any of the events referred to in Clause C3.1(b) hereof.

C3.6 Independent Trustee. If any Trustee appointed under this Deed requires the appointment of an independent Trustee, the Trustee shall appoint as a further trustee a person or company that the Trustee regard as being independent of the Members (and Employers). An independent Trustee so appointed may be removed from office by a resolution of the other Trustees and shall cease to be a Trustee on the happening of any of the events referred to in Clause C3.1(b) hereof.

C3.7 Vacancy. Any vacancy in the office of a Trustee shall, where such vacancy is required to be filled, be filled within sixty days of the date on which the vacancy occurred provided that the failure to fill a vacancy within that period shall not invalidate any subsequent appointment.

C4....APPOINTMENT TO OFFICES

C4.1 Appointment of officers. The Trustee may appoint, and remove from office, any person (or any firm whose principals or employees can provide any of the appropriate services) such people as it considers desirable for the proper administration of the Fund.

C4.2 Ability to act. The Trustee shall be entitled to take and act on advice it requests from any such person or firm and meet the relevant costs from the Fund.

C5....RECORDS AND FINANCIAL STATEMENTS

C5.1 Records and accounts to be kept. The Trustee shall:

- (a) keep account of all moneys received and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect, and pay promptly into a bank or building society account (or some other authorised investment account) in the name of the Fund or Trustee, all moneys paid to the Fund;
- (c) keep appropriate records and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments; and
- (d) prepare after the end of each Fund Year the financial statements required of superannuation funds.

C5.2 Annual accounts. The financial statements, as aforesaid, shall be audited annually or at other periods as permitted by any Relevant Authority.

C5.3 Copy of Deed and financial statements available to Members. A copy of the Deed and the latest financial statements shall be made available on request for inspection by any Member or Beneficiary.

C5.4 Information to be supplied. Information requested by the Trustee from an Employer, Member or Beneficiary to assist in the proper administration of the Fund shall be so given. The Trustee need not verify any information given as aforesaid. The Trustee may suspend Benefits, other than any Vested Benefits, in respect of a Member or Beneficiary if information is not given.

C6...ACTUARIAL INVESTIGATIONS

Where Benefits to any Member are defined in terms of Rules 2, the Fund shall be reviewed by an actuary at least at such periods as required by any Regulations. The actuary shall report and make recommendation on such matters as he sees fit and in particular the Employer's contribution rates, provided that if financial circumstances do not permit, an Employer shall not be bound to pay the contribution rates recommended by the actuary but shall have absolute right to vary the Benefits, Pensions and or Contributions under the Fund or any part thereof as detailed in Clause C2.2.

C7...INVESTMENTS

C7.1 Investments authorised. The Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investment of any kind which the Trustee in exercising its absolute discretion thinks fit, and without limiting the generality of the foregoing either directly or indirectly in:

- (i) any investments for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- (ii) any mortgage of or charge on freehold property;
- (iii) on deposit or loan with any Employer, building society, company, or other organisation whatsoever;
- (iv) the purchase or acquisition of shares, fixed interest investments and options of any company or organisation;
- (v) any mortgage of or charge on any personal or other property including assets of a wasting or depreciable nature;
- (vi) any policy of insurance or annuity contract and any choses in action, interests for life or any lesser terms or in reversion;
- (vii) the purchase or acquisition of any real or personal property and the improvement or extension thereof;
- (viii) the purchase or acquisition of any interests either jointly or in partnership or in any unit of interest including units or sub-units of any unit trust or mutual fund wheresoever situated;
- (ix) the discounting of loans, mortgages, contracts, hire purchase agreements or leases; or by direct lending in any of the same investments;
- (x) any other investments which the Trustee could make if it was acting as an individual person and not as Trustee,

provided that:

- (i) no loan will be permitted to be made to any Member of the Fund;
- (ii) the investments made by the Trustees shall be of such a nature that (subject to any agreement to the contrary made pursuant to Clauses C9.17 and C9.18) they can be realised to enable Benefits to be paid in money as they fall due for payment and provided further that the proportion of Fund assets invested in any single investment shall be limited to such amount as may be provided for in any Regulation.

C7.2 Terms and conditions. Any investment may be made on such terms and conditions as decided by the Trustee in its absolute discretion, including the rate of interest payable and may be made with or without security.

C7.3 Borrowing. The Trustee may borrow money only in terms of any conditions permitted by a Relevant Authority and the charging of any fund assets to secure such borrowings shall only be made in the circumstances where it is necessary to obtain temporary finance for the payment of benefits or other outgoes. Interest payable on any such borrowings shall be a proper outgo of the fund.

C7.4 Power to sell and vary investments. The Trustee shall have power as it sees fit to sell any investments and to vary or transpose any investments into others authorised by the Deed.

C7.5 Appointment of investment manager. The trustee may appoint in writing on such terms as it sees fit one or more corporate bodies, persons or organisations to act on behalf of the Trustee in the investment of part or all of the Fund moneys.

C8....MEMBERSHIP

C8.1 New Members.

(a) **Application to join the Fund.** The Trustee shall provide a written statement to a prospective Member setting out that person's right to receive benefits pursuant to the Rules and such other matters required in order to satisfy the Regulations and a person in applying to join the Fund shall:

- (i) make written application in the form from time to time required by the Trustee;
- (ii) submit evidence of his age and any evidence of the state of his health required by the Trustee;
- (iii) provide any other information reasonably required by the Trustee; and
- (iv) declare in writing that on acceptance of his application he shall be bound by the terms and conditions of the Deed.

(b) **Admission of applicants.** The Trustee shall consider each application and in its absolute discretion may admit the applicant to the Fund. The Trustee may impose conditions on an applicant's admission and his rights and duties as a Member and may limit and impose conditions upon Benefits as it sees fit. Where a person is admitted to the Fund and the Benefits payable in any circumstances differ from those provided under the relevant provisions of the Deed, the Trustee shall advise him in writing to this effect.

C8.2 Transfers from another fund. Where a Member who has been admitted to the Fund was a member of any other Superannuation Arrangement and there is paid to the Trustee for the credit of the Member an amount from such fund, the Trustee shall provide the Member with additional or accrued Benefits in such manner as it shall determine, subject to complying with the requirements of any Relevant Authority and in particular to any Preservation requirement.

C9....GENERAL PROVISIONS RELATING TO BENEFITS, CONTRIBUTIONS AND EXPENSES

C9.1 Member's Contributions deducted from his Salary. Any Contributions payable by a Member may (where the circumstances are relevant) be deducted from his Salary.

C9.2 Pension contributions. Where, under the terms of the Rules, a Member (or an Employer in respect of any Member) makes Contributions on a pension basis, such basis may include both a reversionary pension to a surviving spouse as well as post retirement increases in pensions up to the level permitted under any Regulations, and the payment of the Contribution on the relevant basis shall ipso facto be sufficient evidence that the contributor has decided for the time being to fund for the provision of such pension benefits in respect of that Member.

C9.3 Expenses of administration. All costs, charges and expenses incurred in the administration of the Fund, may be paid by the Trustee from the Fund, or may be paid by one or more Employers if they so chose.

C9.4 Member transfer to another fund. Where a Member or former Member joins or is eligible to join any other Superannuation Arrangement which is considered to be a complying superannuation arrangement under any Regulations, the Trustee, with the approval of the Member or former Member may transfer to the trustee of the other fund an amount which, notwithstanding any other Clause or Rule of the Deed, shall be determined by it in its absolute discretion (provided that in relation to any Preserved Benefit the Trustee shall ensure that at least the full balance of such Benefit is so Preserved either in this Fund or in the transferee fund), and any Benefit entitlements under this Deed to the former Member or his dependants shall cease.

C9.5 Excessive or modified Benefits.

- (a) Notwithstanding any other Clause or Rule of the Deed, Benefits payable to a Member under the Deed may be limited to amounts, or may be modified in such way with the consent of the Founder specifically including the ability to increase such Benefits, so that the Benefit paid to any Member conform with amounts able to be paid pursuant to any Regulations.
- (b) Where the Trustee determines to modify benefits by applying a reduction thereto, part of the Fund assets of such amount as determined by the Trustee may, where applicable, be transferred back to an Employer.
- (c) The Trustee shall inform a Member of any reduction, limitation, modification or improvement of his entitlement under the Deed arising from the operation of this Clause.

C9.6 Forfeited Benefits. Where any Benefit paid to a Member on cessation of Remunerative Employment is less than the full value of that Member's interest in the Fund, the amount of such excess shall, in respect of a fund which is allocated between Members, be distributed between other Members within two months after the end of the Fund Year on a basis determined by the Trustee provided this does not contravene the provisions of any Regulations, or in respect of an unallocated fund, remain in the fund to help meet the costs of Benefits for other Members or shall be applied in such other manner that is approved by a Relevant Authority. Alternatively, with the exception of any Preserved Benefits the Trustee may, in its absolute discretion, repay all or part of the forfeited benefits to an Employer.

C9.7 Compliance of Fund. The Trustee shall have the power to limit Benefits and/or Contributions, or impose restrictions or vary Fund conditions, in order to ensure the Fund gains maximum taxation concessions and any other concessions available to it under any Regulations.

C9.8 Limitation by Insurance Company.

- (i) If in connection with any policy of insurance effected by the Trustee against death or Disablement, an insurance company refuses to insure or seeks to impose any limitations or special conditions in respect of a Member, then notwithstanding the Benefits payable pursuant to the Deed in respect of the aforesaid contingencies, the Trustee may impose limitations or special conditions on such Benefits, provided that no such limitations shall apply to a Vested Benefit.
- (ii) If the Trustee fails to insure a Benefit payable hereunder on the Member's death or Disablement, or if, for any reason, the insurance company, with which the Trustee seeks to insure any of the Benefits payable hereunder on the happening of such an event, declines to accept the proposal for insurance or will only accept such proposal on terms and conditions which the Trustee, in its absolute discretion, regards as being unacceptable, the Benefits payable under this Deed and the Rules annexed hereto on the happening of that event may at the discretion of the Trustee, be reduced by the amount that is not insured provided that no such reduction shall apply to a Vested Benefit.

C9.9 Forfeiture of Benefits. Any Member or Beneficiary:

- (i) who assigns or charges or attempts to assign or charge any Benefits;
- (ii) whose Benefits whether by his own act, operation of law or otherwise become payable to or vested in any other person or organisation;
- (iii) who becomes bankrupt or insolvent;
- (iv) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs;
- (v) who, in the opinion of the Founder, commits any fraud or is guilty of dishonesty, defalcation or serious misconduct against an Employer;
- (vi) who (subject to reasonable enquiries having been made) cannot be located and whose Dependants cannot be located by the Trustee during a period of five (5) years after a payment was due to be made to him;
- (vii) whose membership has ceased and for whom any relevant Benefit has been paid;

shall forfeit further entitlement under the deed.

The Trustee may in its absolute discretion hold the forfeited Benefit upon trust and, following the termination of the Member's Remunerative Employment, pay it to the former Member or Beneficiary (as the case requires) and his Dependants or any one or more of them in such proportions between them and on such terms and at such times as the Trustee in its absolute discretion determines and, if in the sole opinion of the Trustee, there is nobody rightfully entitled to receive the Benefit the money shall remain in the Fund for the benefit of remaining Members. Alternatively, the Trustee may, in its absolute discretion, repay all or part of the forfeited benefits to an Employer, provided that any Vested or Preserved Benefit is applied for the Benefit of the Member.

C9.10 Conversion to Pension payments.

(a) Subject to Clause 9.10(b), where:-

- (i) the Primary Purpose of the Fund is to pay Pensions at or after the Normal Retirement Age, or
- (ii) the size of any lump sum Benefit exceeds the amount able to be paid as a lump sum pursuant to any Regulations, or
- (iii) a Member or Beneficiary at his option elects to take a Benefit by way of a Pension,

any Benefit expressed as a lump sum under these Rules (or part of that Benefit as decided by the Trustee in consultation with the Member or Beneficiary) may be used to purchase an annuity from an appropriate organisation or, if the Trustee permits, be converted to a Pension payable from the Fund, the amount of such Pension and the conditions under which it is payable being determined by the Trustee taking into account the provisions of any Regulations.

(b) Where the Primary Purpose of the Fund is the provision of pensions at or after the Normal Retirement Age, the application of this Clause shall not prevent a Member or Beneficiary from requesting a lump sum Benefit to be paid of such amount as permitted by any Regulations and the Trustee shall accede to such request.

C9.11 Appointments.

(a) The Founder, referred to in the preamble of this Deed or any replacement made hereunder, shall be entitled to resign that position and appoint another person or party in its place.

Such resignation shall be effective from the date that the then Founder and appointee mutually sign a Fund minute which concurrently provides for the resignation of the existing Founder and the acceptance by a new Founder to that position and agreeance to be bound by the terms of the Deed.

(b) A Principal Member or Principal Employer shall have the same right to resign and method of replacement as referred to in sub-Clause (a), provided the resigning party shall be able to appoint either a Principal Member or a Principal Employer depending on the continuing circumstances of the Fund and such new appointment is acceptable to the Founder.

C9.12 Payment to others on behalf of Beneficiaries. When any Beneficiary is under the age of twenty-one years or when in its opinion it would be in the best interests of the Beneficiary, the Trustee may pay all or part of a Benefit to any other person for application on behalf of the Beneficiary and or to his Dependants and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit.

C9.13 Benefits not grounds for increasing any claims for damages. The Benefits to which a Member might claim to be entitled under the Deed shall not be used as grounds for increasing or as a means of assessing damages in any claim made or action brought by a Member against an Employer.

C9.14 Deduction of tax. The Trustee is specifically entitled to deduct from any Benefit, Contribution or other amounts received by the Fund any form of taxation payable from or in respect of such amounts, to credit such amounts in accordance with Clause C2.2(v) and to remit such taxation amounts to the Taxation Office pursuant to the requirements of the Income Tax Act.

C9.15 (a) Persons to whom benefits are payable. Subject to the terms of the Rules, the Trustee shall pay Benefits as follows:

- (i) Where the Benefit or balance of the Benefit is payable following the Member's Death: to the Member's Dependants in such proportion as decided by the Trustee in its absolute discretion or where there are no Dependants to the legal personal representatives.
 - (ii) In all other cases: to the Member.
- (b) Receipt. Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in the form from time to time required by the Trustee.

C9.16 Payment to Employers. Subject to any Regulations, the Trustee in its sole and absolute discretion may return part of the assets of the Fund to such Employers as it decides.

C9.17 Payment of Benefits in Specie. The Trustee may, with the agreement of the Member or Beneficiary to whom a Benefit is payable, transfer investments of the Fund of equivalent value to such Member or Beneficiary in lieu of paying in money the whole or part of the amount otherwise payable under the provisions of this Deed, provided this is not inconsistent with any Regulations.

C9.18 Payment of Benefits Deferred. On the termination of the employment of a Member, the Trustee may, with the agreement of the Member, hold any Benefits upon trust in the Fund for such period as agreed between the Member and Trustee and during such period the Trustee shall increase the Benefit with interest at the Net Earning Rate of the Fund. Payment of a deferred Benefit shall be made as requested by the former Member in one or more amounts at times selected by such former Member (provided such flexibility in payment is not contrary to any Regulations).

C9.19 Regulations to prevail. Notwithstanding any other Clause of this Deed, it shall be deemed that the requirements set out in any Regulations are hereby deemed to be included as part of the provisions of this Deed. Where there is any conflict between a provision in the said Regulations and a provision in this Deed, the former shall prevail over the latter.

C10....ADMISSION OF PARTICIPATING EMPLOYERS

C10.1 Admission as Participating Employer. The Trustee may admit an associated Employer as a Participating Employer and may stipulate that such associated Employer first undertakes in writing with the Founder and Trustee to be bound by the provisions of the Deed and the Rules in the same manner as if it had been a party hereto.

C11....DISCONTINUANCE OF CONTRIBUTIONS AND WINDING-UP

C11.1 Discontinuance of Contributions.

- (a) A contributor (being either a Member or an Employer) may discontinue payment of Contributions for any or all Members subject to its having given the Trustee one month's notice in writing of its intention so to do whereupon the Benefit in respect of each such Member and Beneficiary shall be determined by the Trustee in its sole and absolute discretion.
- (b) Entitlements in respect of all such Members and Beneficiaries shall be held under the trusts of the Deed until the Benefit as determined by the Trustee can be paid to or in respect of the Member or Beneficiary pursuant to the terms of the Deed (subject to any Preservation requirements) or if the Trustee determines, transferred to another fund in accordance with the Deed.

C11.2 Winding up.

- (a) In the event of a Principal Employer ceasing to carry on business but where one or more other Employers continue in business, the Trustee shall nominate an Employer continuing in business to assume any functions of the Principal Employer hereunder and that Employer shall thereupon assume those functions.

- (b) Where the Founder so determines, the Fund shall be wound up and the benefit payable in respect of each Member or Beneficiary shall be determined by the Trustee in its sole and absolute discretion and thereupon be paid or applied in such manner as the Trustee may determine (including transfer to another fund) in respect of each person in complete discharge of the obligations of the Trustee provided that no Preserved Benefit is paid prior to one of the Preservation requirements being met.

C12...ALTERATIONS

C12.1 Alterations. The Trustee shall have the power from time to time by resolution in writing or deed, with the consent of the Founder but not otherwise, to alter, modify or add to any of the provisions of this Deed provided that:-

- (i) amendments that reduce any accrued benefit shall firstly require the written consent of the Members concerned or of the Relevant Authority;
- (ii) no amendment shall be made which would result in a Vested Benefit not being paid or a Preserved Benefit being paid prior to one of the Preservation requirements being met; and
- (iii) the Members must, as soon as practicable, be advised in writing of the nature, purpose and effect of any such amendments.

Any alteration modification or addition so made shall be deemed to have the same effect as if it had been contained in this Deed.

- RULES 1 -
Allocated Pensions or Lump Sums.

R1.1 Application.

- (a) Benefits to a Member provided under these Rules shall be made from an account established pursuant to Rule R1.8.
- (b) Where the Primary Purpose of the Fund is the provision of pensions at or after the Normal Retirement Age as required by a Relevant Authority, the Benefit conditions of Rule R1.7 shall be applicable at that time.

R1.2 Contributions.

- (a) Member Contributions. A Member may, subject to the provisions of the Deed, make Contributions in a Fund Year of such amount as he decides including the ability to fund for either maximum lump sum or pension benefits.
- (b) Employer Contributions. Where applicable, an Employer of a Member may, subject to the provisions of the Deed, make Contributions in a Fund Year in respect of any Member of such amount as it decides including the ability to fund for either maximum lump sum or pension benefits.

R1.3 Benefit at or after attainment of the Normal Retirement Age. The Trustee shall pay a Benefit to a Member at or after the Normal Retirement Age provided that such Benefit shall be paid or commence to be paid no later than required by any Relevant Authority.

The Benefit, subject to the provisions of the Deed and also to Rule R1.7, shall be equal to the Member's Individual Account maintained pursuant to Rule R1.8.

R1.4 Benefit on death or Disablement. In the event of the death or Disablement of a Member, the Trustee shall pay a Benefit to or in respect of the Member determined pursuant to Rule R1.3 provided such Benefit shall be paid or commence to be paid no later than required by any Relevant Authority.

R1.5 Benefit in other circumstances. In the event of a Member ceasing to be in Remunerative Employment and not entitled to a Benefit pursuant to any other Rule, the Trustee shall pay a Benefit equal to the Member's Individual Account multiplied by the Vesting Factor and, if any part of such Benefit is required to be Preserved, the Preserved component shall not be paid until one of the Preservation requirements has been met.

R1.6 Additional death and Disablement Benefits where covered by Insurance. The Trustee may insure one or more Members for lump sum Benefits to be payable on the death or Disablement of the relevant Members or Members. Where the Trustee has effected such death and/or Disablement insurance, the amount payable in the event of a Member's death or Disablement shall, in lieu of any payment due under Rule R1.4 be a lump sum payment equal to the claim paid under such policy provided that:

- (i) in respect of Disablement, the Trustee may also insure a Member or Members for an income benefit which shall be restricted to no more than two years' payment;
- (ii) the total Benefit paid to or in respect of a Member as a result of this Rule shall not be less than the amount which would otherwise have applied if the Benefit had been determined in accordance with the provisions of Rule R1.3.

The maximum lump sum Benefit insured under this Rule shall be such amount as permitted by a Relevant Authority.

The Trustee shall, in its sole discretion, be empowered to pay any lump sum insurance proceeds as an addition to any other Benefit.

R1.7 Lump sum Benefit converted to Pension. Any lump sum Benefit payable hereunder shall, where applicable, be converted to a Pension pursuant to the provisions of Clause C9.10.

R1.8 Individual Accounts. The Trustee shall establish an Individual Account in respect of each Member which shall be equal to the sum of:

- (a) All Contributions and other payments and transfers to the Fund by the Member or, where applicable, by his Employer; plus
- (b) Interest credited to the Member's Individual Account at a rate determined by the Trustee as being applicable to that Account; less
- (c) Any Benefit payments, taxation amounts, risk-only insurance premiums and other outgoes.

R1.9 Other provisions relating to Individual Accounts.

- (a) The amount of interest credited to a Member's Individual Account shall be allocated to the Individual Account on a basis determined by the Trustee.
- (b) Where an Employer contributes to the Fund for a Member, the Trustee may maintain sub-accounts in respect of Employer and Member Contributions in which case any risk-only insurance premiums and Fund outgoes shall (where the sub-account is positive) first be debited against the Employer sub-account.
- (c) The Trustee shall not, except pursuant to sub-Rule (d), pay any Benefit or instalment thereof if the payment would exceed the balance of the Member's Individual Account. Once the amount of the Individual Account is exhausted, all payments to or in respect of the former Member shall cease.
- (d) Where any residual amount remains in a Member's Individual Account after all Benefit payments have been made to or in respect of the former Member, and the Trustee determines that such residual amount will not form part of the Forfeited Benefits under Clause C9.6, the balance of such Account may be paid to the former Member, his Dependants or legal personal representatives as the Trustee shall determine.

- RULES 2 -
Defined Benefits

R2.0 Definitions.

'Benefit Factor' in relation to a Member means the multiple of Highest Average Salary (or some variation thereof) as permitted under any Regulation in order to provide the highest lump sum Benefit to the Member as at his Normal Retirement Age, provided that an Employer may in writing specify a lower multiple to apply to any Member.

'Employer's Benefit Share' means the Fully Accrued Benefit less the Member's Accumulated Contributions.

'Fully Accrued Benefit' means an amount calculated as follows -

$$\text{Benefit Factor} \times \frac{\text{Fund Membership}}{\text{Membership Period to Retirement}} \times \text{Highest Average Salary}$$

provided that such amount may be reduced on a basis decided by the Trustee where Contributions to the Fund have not been made as recommended pursuant to Clause C6, or where the total of the Fully Accrued Benefit for all Members exceeds the value of fund assets.

'Membership Period to Retirement' means the exact period between the date of actually joining this Fund and the date on which the Member attains the Normal Retirement Age.

R2.1 Application.

- (a) This part, referred to as Rules 2, applies to those Members who will receive a Benefit payable at or after the Normal Retirement Age determined by reference to their period of membership and Salary (or some modification thereof).
- (b) Where the Primary Purpose of the Fund is the provision of pensions at or after the Normal Retirement Age as required by a Relevant Authority, the Benefit conditions of Rule R2.7 shall be applicable at that time.
- (c) Notwithstanding the application of the term "Benefit Factor" as defined, the Employer of a Member can, in accordance with the general provisions and rights contained in the Deed, fund for Pension Benefits to be paid to or in respect of a Member upto the maximum levels permitted by any Regulations.
- (d) Unless otherwise determined by the Trustee, this part of the Fund shall be operated on an unallocated basis where no individual account is maintained other than for a Member's Accumulated Contributions, if any.

R2.2 Contributions.

- (a) Contributions payable by Members. Unless otherwise determined by the Employer, a Member shall not be required to contribute to the Fund.
- (b) Contributions payable by Employer. Where applicable, the Contributions payable by an Employer in respect of all Members shall be determined by the Trustee acting on actuarial advice pursuant to Clause C6 of the Deed.

R2.3 Benefit at or after attainment of the Normal Retirement Age. The Trustee shall pay a Benefit to a Member at or after the Normal Retirement Age provided that such Benefit shall be paid or commence to be paid no later than required by any Relevant Authority.

The Benefit, subject to the provisions of the Deed and also to Rule R1.7, shall be equal to the Member's Benefit Factor multiplied by his Highest Average Salary.

R2.4 Benefit on death or Disablement. In the event of the death or Disablement of a Member, the Trustee shall pay a Benefit to or in respect of the Member determined pursuant to Rule R2.5 provided such Benefit shall be paid or commence to be paid no later than required by any Relevant Authority.

R2.5 Benefit in other circumstances. In the event of a Member ceasing to be in Remunerative Employment and not entitled to a Benefit pursuant to any other Rule, the Trustee shall pay a Benefit equal to the Fully Accrued Benefit times the Vesting Factor and, if any part of such Benefit is required to be Preserved, the Preserved component shall not be paid until one of the Preservation requirements has been met.

R2.6 Additional death and Disablement Benefits where covered by Insurance. The Trustee may insure one or more Members for lump sum Benefits to be payable on the death or Disablement of the relevant Members or Members. Where the Trustee has effected such death and/or Disablement insurance, the amount payable in the event of a Member's death or Disablement shall, in lieu of any payment due under Rule R2.4 be a lump sum payment equal to the claim paid under such policy provided that:

- (i) in respect of Disablement, the Trustee may also insure a Member or Members for an income benefit which shall be restricted to no more than two years' payment;
- (ii) the total Benefit paid to or in respect of a Member as a result of this Rule shall not be less than the amount which would otherwise have applied if the Benefit had been determined in accordance with the provisions of Rule R2.4.

The maximum lump sum Benefit insured under this Rule shall be such amount as permitted by a Relevant Authority.

The Trustee shall, in its sole discretion, be empowered to pay any lump sum insurance proceeds as an addition to any other Benefit.

R2.7 Lump sum Benefit converted to Pension. Any lump sum Benefit payable hereunder shall, where applicable, be converted to a Pension pursuant to the provisions of Clause C9.10.

SCHEDULE

Fund Membership	Vesting Factor
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For all complete years of Fund Membership	1.00

provided that in respect of that part of any lump sum Benefit equal to the Employee Financed Benefit, the Vesting Factor shall always be 1.00

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

THE FOUNDER:

SIGNED BY THE SAID FOUNDER
in the presence of:

.....
Witness

E. Vingulto
.....
Witness



THE TRUSTEE:

Where the trustee is a corporate body -

THE COMMON SEAL OF THE TRUSTEE was affixed
in the presence of:

.....
Witness

.....
Director

.....
Witness

.....
Secretary

Where the trustees are individuals -

SIGNED BY THE SAID TRUSTEE
in the presence of

E. Vingulto
.....(Witness)

M. Lee
.....(Trustee)

SIGNED BY THE SAID TRUSTEE
in the presence of

E. Vingulto
.....(Witness)

M. Valle
.....(Trustee)

SIGNED BY THE SAID TRUSTEE
in the presence of

.....(Witness)

.....(Trustee)