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SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

(GAINFULLY OCCUPIED PERSONS)

SUPERANNUATION TRUST DEED

FOR

The Nieto Superannuation Fund

This Deed was drawn by
D.G.F. Morgan and Associates
Solicitors

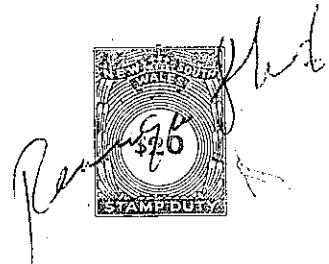


This Deed is made at:

on: 5 March 1997

by: Bihope Pty Ltd
(A.C.N. 002 999 288)

and whose address is at 32 Dalbertis Street
Abbotsbury NSW 2176



in the capacity of Trustee and described in this Deed as Trustee in that capacity

and: Nieto, Remigio

of: 32 Dalbertis Street
Abbotsbury NSW 2176

called in this Deed "the Initial Member" in that capacity

Whereas

- A. The Trustee and Initial Member have determined to establish and maintain an indefinitely continuing superannuation fund within the meaning of the Act for the purposes of the provision of benefits for Members upon their retirement, the provision of benefits upon their attaining a particular age, the provision of benefits for dependents of a Member upon death and for such other purposes permitted by the Superannuation Conditions.
- B. The party or parties named as Trustees shall be the first Trustee or Trustees.
- C. The Initial Member comprises the first membership of the Fund.

Now this Deed witnesses:

Fund Establishment

- 1.1 The Trustee and the Initial Member hereby establishes a superannuation fund which shall be known as the The Nieto Superannuation Fund ("the Fund").
- 1.2 The Fund shall commence and come into operation on the date of this Deed.
- 1.3 The Trustees shall hold the Trust Fund upon the Trusts contained in this Deed.

Interpretation

2.1

In this Deed unless the context otherwise requires words importing gender shall include any gender and words importing number shall include the singular number and the plural number. The following words shall have the meanings set after them unless the contrary intention appears and subject to 2.3:-

"Act" means the Superannuation Industry (Supervision) Act, the Occupational Superannuation Standards Act, 1987 or any other Act (as may be amended from time to time) governing superannuation funds from time to time and any re-enactment thereof and includes regulations from time to time made thereunder and the determinations from time to time of the Commissioner and where the context requires, the Guarantee Act.

"Actuary" means a Fellow or an Accredited Member of the Institute Actuaries of Australia.

"Associated Employer" means any company, person or firm which the Trustees admits under this Deed or the Rules of the Fund to participate as an Employer in the Fund.

"Auditor" means an approved Auditor as defined in Section 10 of SIS.

"Commissioner" means the Insurance and Superannuation Commissioner appointed under the Insurance and Superannuation Commission Act 1987, or a person for the time being acting as Insurance and Superannuation Commissioner under that Act or any other governmental authority responsible for administering the laws or rules relating to the concessional taxation of Superannuation Funds.

"Dependant" means the spouse and any child (in either case within the meaning of the Act) of the Member and any other person who in the opinion of the Trustees is and is accepted by the Commissioner to be at a relevant time a dependant of the member within the meaning of the Act.

"Eligible Person" means a person engaged in any business, trade, profession, vocation, calling, occupation or employment or otherwise a person permitted by the Superannuation Conditions to join the Fund of the nature of this Fund and includes any person who is under age 65 and who has at any time in the period of two years immediately preceding the date of the Deed constituting the Fund engaged in full-time or part-time gainful employment or any other person who is otherwise not excluded from membership of the Fund by the Superannuation Conditions.

"Employee" has the meaning given by Section 10 of SIS.

"Employer" has the meaning given by Section 10 of SIS.

"Employer Representative" has the meaning given by Section 10 of SIS.

"Employer-Sponsored Fund" has the meaning given by Section 16(3) of SIS.

"Employment" means gainful employment, part-time employment and full-time employment and includes the services of an independent contractor and all senses of the word employ include the same meaning.

"Financial Year" means the accounting period selected by the Trustees for the Fund. It shall not exceed twelve months and may at times be less than twelve months.

"Deed" means this Deed and the Rules or any alteration to, addition to or variation made to it from time to time.

"Guarantee Act" means the Superannuation Guarantee (Administration) Act 1992.

"Mandated Employer Contributions" has the meaning given by the SIS Regulations.

"Mandated Employer-Financed Benefits" has the meaning given by the SIS Regulations.

"Member" means an Eligible Person who has been admitted to the Fund and where the context so requires or permits includes a Past Member, a former Member and a Pensioner.

"Member Financed Benefits" has the meaning given by the SIS Regulations.

"Member Representative" has the meaning given by SIS.

"Old-Age Pensions" has the same meaning as in paragraph 51(xxiii) of the Constitution.

"Past Member" means a former Member who still has a right to receive a benefit from the Fund.

"Pension Benefit Account" means an account that provides a retirement benefit.

"Pensioner" means a retired Member, Past Member of the Dependent of a deceased Member, Past Member or Pensioner who is in receipt of a Pension.

"Personal Representative" means in relation to a Member a person who satisfies the Trustees that such person is entitled to represent the Member and to give valid receipts and discharges on the Member's behalf and in relation to a deceased Member the person who has been granted probate of a will or letters of administration of an estate of that Member.

"Preserved Portion" means the portion of an account or a benefit that is preserved for the benefit of a Member under the Superannuation Conditions, this Deed or other agreement.

"Regulated Superannuation Fund" has the meaning given by Section 19 of SIS.

"Retire" means to cease to be engaged in the employment in which the Member is for the time being engaged and "Retirement" has a corresponding meaning.

"Retirement Date" means the sixty-fifth birthday or such other date as the Trustees determine, not being inconsistent with the Superannuation Conditions.

"Rules" means the Rules set out in the Schedule to the governing rules and includes any additions, variations and modifications thereto.

"SIS" means the Superannuation Industry (Supervision) Act 1993 as amended from time to time and regulations from time to time made thereunder. "SIS Regulations" mean the regulations made under SIS as amended from time to time.

"Spouse" in relation to a person, includes another person, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person.

"Standard" means a standard prescribed by the Act.

"Standard Employer-Sponsor" has the meaning given by Section 16(2) of SIS.

"Standard Employer-Sponsored Fund" has the meaning given by Section 16(4) of SIS.

"Superannuation Conditions" subject to 2.4 means any provision which may be applicable to the Fund under the Act or other laws or rulings of the Commissioner which must or may be met for the Fund to be treated with the most concessional taxation treatment available or to be treated in any manner which, in the opinion of the Trustees, is concessional.

"Trustees" means the trustees or the trustee for the time being of the Fund and "Trustee" has the same meaning.

"Vested Portion" means the portion of an account or benefit that is vested for the benefit of a Member including any such portion which is preserved for the benefit of a Member and any such portion which has been transferred in respect of a Member to the Fund from another superannuation fund as a vested benefit.

2.2 **Headings:** The headings in this Deed and the Rules are for convenience and reference only and shall not affect its interpretation.

2.3 **Interpretation:** Any word or expression which is defined in the Act shall in this Deed have the meaning ascribed to it by the Act and to the extent that a meaning ascribed to a word or expression within this Deed is inconsistent with the meaning ascribed to it by the Act the meaning ascribed by the Act shall prevail unless the contrary intention appears provided that where more than one meaning may be ascribed then the Trustees may determine which of those meanings shall apply.

2.4 **Inconsistencies with the Superannuation Conditions:** Where it appears to the Trustees that there is any inconsistency or difference between:-

- (a) any provision of any Act or other laws and another provision or provisions;
- (b) the rulings of the Commissioner and other rulings of the Commissioner; or
- (c) the Acts or laws referred to in (a) and the rulings referred to in (b)

then the Trustees may determine, either generally or in respect of any particular application, in their absolute discretion, which provision or ruling shall apply and the Deed shall be construed accordingly.

This Deed and the Rules shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of residence of the Trustee provided that Section 35(b) of the South Australian Trustees Act 1936 shall not apply to this Deed. Any person having or claiming any interest under this Deed shall submit to the jurisdiction of the Courts of that State or Territory.

Saving Provision: To the extent any provision of this deed would be void or invalid, but for this paragraph ("an invalid provision"):

- (a) where a reading down or limitation of the operation of the invalid provision would remove the voidness or invalidity, that shall be done in constructing the Deed;
- (b) where it is not possible to apply paragraph (a), the invalid provision shall be severed from the Deed;
- (c) in any event, an invalid provision does not affect the continued operation of the remainder of the Deed.

Sole Purpose Test

Core purposes: The Trustees must ensure that the Fund is maintained solely for one or more of the core purposes or both one or more of the core purposes and for one or more of the ancillary purposes provided in SIS.

Constitution of Fund

Trusts: All assets of the Fund shall be vested in the Trustees who shall stand possessed of the same upon trust to apply the same in the manner and for the objects and purposes of the Fund as set forth in the Deed and any amendment thereto.

Perpetuities: If the Deed is or becomes subject to a rule against perpetuities the Trustees shall not later than the specified date dissolve the Fund and pay to or secure for the Members or their Dependents or Personal Representatives such amounts as the Trustees may subject to this Deed determine notwithstanding that Members are then in the service of the Employer. For the purposes of this paragraph the "specified date" is that date which by the rule to which this Deed is or becomes subject is the last date limited for the vesting of the whole of the Fund without infringement of the rule and where that date is to be calculated by reference to a life in being the life is that of the last survivor of all the lineal descendants of His Late Majesty King George VI who are living at the date of execution of this Deed.

Constitutional Requirements

5.1 Constitutional corporation: Notwithstanding anything contained in this Deed the Trustee shall be a constitutional corporation.

5.2 Trustees to give notice to become a regulated fund: The Trustees shall give to the Commissioner within the period provided by the Superannuation Conditions a written notice in the approved form and signed in the manner required by the Act electing that SIS is to apply in relation to the Fund.

Statutory Covenants

Statutory covenants: The purpose of this paragraph is explanatory only. The effect of Section 52 of SIS is that the Trustees covenant:-

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustees' duties and powers are performed and exercised in the best interests of the beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:-
 - (i) that are held by the Trustees personally; or
 - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund;
- (e) not to enter into any contract, or do anything else, that would prevent from, or hinder the trustee in, properly performing or exercising the Trustees' functions and powers; this does not prevent the Trustees from engaging or authorising persons to do acts or things on behalf of the Trustees.
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
 - (i) the risk involved in making, holding and realising, and the likely return from the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary access to any information or documents prescribed under SIS.

- (i) to observe such covenants as are prescribed to be included in the governing rules of the Fund prescribed by the SIS Regulations.

Statutory Requirements

Regulated fund: It is the intention of the Trustees that the Fund shall comply with and be administered as a regulated superannuation fund and one that is not a public offer superannuation fund. Notwithstanding any provision in this Deed to the contrary the Trustees are empowered to do all things necessary to be done by them to ensure that the Fund does not become a public offer superannuation fund and satisfies the relevant provisions of the Superannuation Conditions applicable to regulated superannuation funds and notwithstanding any provision to the contrary the Trustees are restrained from doing or omitting to do anything the doing or omission of which will cause the Fund to fail to satisfy such provisions or cause the Fund to become a public offer superannuation fund.

Alterations to the Deed

Methods to alter Deed: Subject to this paragraph 8, the Superannuation Conditions and the Trustees consent, if required by those Conditions, this Deed and the Rules may be amended:

- (a) by deed executed by the Trustees and subject to compliance with the Superannuation Conditions, with the consent of a two thirds majority of members; or
- (b) by oral resolution of the Trustees and subject to compliance with the Superannuation Conditions, with the consent of a two thirds majority of members.

Effective date: An amendment under this paragraph shall take effect from the date (prospective or retrospective) specified in the resolution or if not specified on the date on which the resolution is made.

Prohibition: If the Superannuation Conditions prohibit it, from the time that the Fund is a regulated Superannuation Fund, the Deed shall not be amended in such a way that:

- (a) an individual would be eligible to be appointed as Trustee unless the rules provide, and will continue to provide after the amendment is made, that the Fund has, as its sole or primary purpose, the provision of old-age pensions; or
- (b) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the governing rules provide, and will continue to provide after the amendment is made, that the Trustee must be a constitutional corporation.

Notice to be given to members following alteration: The Trustees shall give to each Member such information or notice in respect of the amendments as may be required by the Superannuation Conditions.

Trustees

Written consent of Trustee required. A person is not eligible for appointment as a Trustee, or, if the Trustee is a corporate Trustee, as

a director of that corporate Trustee, unless the person has consented in writing to the appointment.

Consent of new members to Trustees: A person joining the Fund as a Member consents as a condition of joining the Fund to the Trustees at the date of the Member so joining continuing to act as Trustees.

Chairperson: The Chairperson of any meeting of the Trustees or of the body corporate sole Trustee shall not have any second or casting vote.

Number of Trustees: A constitutional corporation may act as sole Trustee and more than one Trustee may be appointed.

Meetings of members: The Trustees may establish procedures and policies for the regulation of meetings of members.

Decisions of Trustees: If required by the Superannuation Conditions, a decision of:

- (a) the individual Trustees of a Fund; or
- (b) the Board of Directors of the Corporate Trustee of a Fund;

must be taken not to have been made, or to be of no effect, if fewer than two thirds of the total number of the Trustees or Directors, as the case requires, voted for it. Otherwise a majority vote shall be sufficient.

Basic equal representation rule:

- (a) **Compliance with Rule:** The Fund shall, if required by the Superannuation Conditions, comply with the basic equal representation rule.
- (b) **Member Representatives:** If the Superannuation Conditions require, the Trustees shall establish further rules setting out a procedure for appointing and removing member representatives consistent with these conditions.
- (c) **Notice of procedure to be given to members:** The Trustees will, if required by the Superannuation Conditions, take reasonable steps to make members of the Fund aware of the procedure for appointment and removal of member representatives as required by the Superannuation Conditions.
- (d) **Appointment of Employer Representatives:** Where it becomes necessary for any reason for an employer representative to be nominated to the office of Trustee or to the board of a corporate Trustee that nomination shall be made in writing by the Associated Employers and shall be effective upon delivery of the nomination to the Trustee.
- (e) **Removal of Employer Representatives:** Subject to the Superannuation Conditions, an employer representative may be removed by notice of removal in writing by the Associated Employers which shall be effective upon delivery to the Trustee.
- (f) **Appointment of an independent Trustee:** Subject to the Superannuation Conditions, the Trustees may appoint a person

as an Independent Trustee. Where the Trustees are so empowered, they may appoint an Independent Director to the Board of a corporate Trustee.

- (g) **Procedures for appointing and removing independent Trustees:** The Trustees shall, if required by the Superannuation Conditions, establish rules setting out a procedure for appointing and removing any independent trustee or an independent director of a corporate Trustee.
- (h) **Casting vote:** If there is an independent Trustee appointed as a Trustee of the Fund or an independent director of a corporate Trustee then that independent Trustee or director shall not, if prohibited by the Superannuation Conditions, have a casting vote in any proceedings of Trustees or the board of a corporate Trustee.

Vacancy in office of Trustee: The office of a Trustee or of a director of a body corporate sole Trustee shall ipso facto become vacant if the Superannuation Conditions require it or upon the Trustee's or director's:

- (a) death;
- (b) mental or physical incapacity;
- (c) retirement by written notice to the Members and any other Trustee;
- (d) becoming a disqualified person within the meaning of SIS;
- (e) suspension or removal under SIS;
- (f) tenure of the Trustee's position expires;

and a new Trustee may be appointed by the Members, subject to this Deed, by deed or other written instrument.

Members to fill vacancy: If a vacancy occurs in the membership of Trustees or board of a corporate trustee then the vacancy must be filled within 90 days after it occurred where the Superannuation Conditions require it or such other time as permitted under the Superannuation Conditions. And such vacancy may, subject to the Superannuation Conditions, be filled by a two-thirds majority of members.

- (a) **Members may remove Trustee:** Subject to the Superannuation Conditions and if required by them, with the Trustees' consent, the Trustee or where there is more than one a Trustee (other than an Employer Representative) may be removed by a two-thirds majority of the Members and such removal shall be effective upon the passing of a resolution to that effect in accordance with this Deed.
- (b) **Members may replace Trustee:** At the time of making a resolution under sub-paragraph (a) above the Members may (with the written consent of the appointee or appointees) by resolution made and effected in like manner appoint a Trustee or Trustees to replace the person or persons so removed.
- (a) **Removal of employer representative:** Subject to the Superannuation Conditions and if required by them, with the Trustees' consent, an Employer Representative may be removed by

a two-thirds majority of the Associated Employers and such removal shall be effective upon the passing of a resolution to that effect in accordance with this Deed.

- (b) **Replacement of employer representative:** At the time of making a resolution under sub-paragraph (a) above the Associated Employers may (with the written consent of the appointee or appointees) by resolution made and effected in like manner appoint an Employer Representative to replace the person or persons so removed.
- (a) **Approval of Members generally:** Subject to the Superannuation Conditions and to paragraph 9.7 where under the terms of this Deed there is required in relation to the exercise by the Trustees of any power or authority or there is otherwise required the resolution, consent, approval or agreement (herein referred to as "resolution") of the Members generally the passing or rejection of that resolution shall be determined in accordance with the succeeding provisions of this sub-paragraph unless all members of the Fund at the time of signature have signified their consent in writing.
- (b) **Written notice to members:** The Trustees of their own motion or upon written requisition by not fewer than ten percent of the Members shall give written notice by pre-paid ordinary mail to each Member:-
 - (i) specifying the matter in respect of which resolution is sought;
 - (ii) setting out a comprehensible explanation of the reasons for which the resolution is sought;
 - (iii) specifying the effect of the provisions of this sub-paragraph in relation to the determination of the resolution;
 - (iv) containing provision for the Members indication of the passing or rejection of the resolution;
 - (v) containing a stamped addressed envelope to the Trustees.
- (c) **Trustee meeting to table responses:**
 - (i) Upon the date which is fifteen (15) clear ordinary business days from the date upon which the notices under sub-paragraph (b) were posted to the Members the Trustee shall at a duly convened meeting of the Trustee table the responses of the Members received by the Trustee and in the event that the requisite majority of responses indicates the passing of the resolution it shall be passed and in the event that the requisite majority of such responses indicates the rejection of the resolution it shall be rejected.
 - (ii) Any Member shall be entitled to attend as an observer a meeting of the Trustees under this sub-paragraph.
- (d) The Trustees shall retain the responses with the Minutes of the Meeting at which they were tabled.

- (e) **Requisite majority:** In the provisions of this sub-paragraph the expression "requisite majority" shall mean:-
- (i) in the case where a two-thirds majority is required - two-thirds or more of the responses;
 - (ii) in any other case - one-half or more of the responses.
- (f) **Notification to members and employers:** The Trustee shall within fourteen (14) days of any meeting held under the provisions of this sub-paragraph notify all Members and Associated Employers of the result thereof.
- (g) **Strict compliance not essential:** Any resolution made under this paragraph is not invalidated by reason of any or want of strict compliance with these provisions unless it shall be shown that there has or may be caused thereby some substantial and irremediable injustice.
- 9.13 (a) **Approval of Members generally:** Where under the terms of this Deed there is required in relation to the exercise by the Trustees of any power or authority or there is otherwise required the resolution, consent, approval or agreement (herein referred to as "resolution") of the Associated Employers generally the passing or rejection of that resolution shall be determined in accordance with the succeeding provisions of this sub-paragraph unless all Associated Employers at the time of signature have signified their consent in writing.
- (b) The Trustees of their own motion or upon written requisition by not fewer than ten percent of the Associated Employers shall give written notice by pre-paid ordinary mail to each Associated Employer:-
- (i) specifying the matter in respect of which resolution is sought;
 - (ii) setting out a comprehensible explanation of the reasons for which the resolution is sought;
 - (iii) specifying the effect of the provisions of this sub-paragraph in relation to the determination of the resolution;
 - (iv) containing provision for the Associated Employers indication of the passing or rejection of the resolution;
 - (v) containing a stamped addressed envelope to the Trustees.
- (c) **Trustees meeting to table responses:**
- (i) Upon the date which is fifteen (15) clear ordinary business days from the date upon which the notices under sub-paragraph (b) were posted to the Associated Employers the Trustee shall at a duly convened meeting of the Trustee table the responses of the Associated Employers received by the Trustee and in the event that the requisite majority of responses indicates the passing of the resolution it shall

be passed and in the event that the requisite majority of such responses indicates the rejection of the resolution it shall be rejected.

- (ii) Any Associated Employer shall be entitled to attend as an observer a meeting of the Trustees under this sub-paragraph.
- (d) The Trustees shall retain the responses with the Minutes of the Meeting at which they were tabled.
- (e) **Requisite majority:** In the provisions of this sub-paragraph the expression "requisite majority" shall mean:-
 - (i) in the case where a two-thirds majority is required - two-thirds or more of the responses;
 - (ii) in any other case - one-half or more of the responses.
- (f) **Notification to Members and Employers:** The Trustee shall within fourteen (14) days of any meeting held under the provisions of this sub-paragraph notify all Members and Associated Employers of the result thereof.
- (g) **Strict compliance not essential:** Any resolution made under this paragraph is not invalidated by reason of any or want of strict compliance with these provisions unless it shall be shown that there has or may be caused thereby some, substantial and irremediable injustice.

Indemnification of Trustees

10.1 **Indemnity:** Subject to SIS, the Trustee, or if there is more than one, each of them, shall be indemnified against all liability incurred while acting as Trustee. This includes things done or omitted to be done.

10.2 **Trustees may obtain advice:** The Trustees may seek advice from any person in respect of any matter relating to performance of the duties or the exercise of the powers of the Trustees and the indemnity referred to above includes the cost of obtaining such advice.

Indemnification of Directors of Trustees from Assets of Fund

11.1 **Directors' indemnity:** Subject to SIS, where the Trustee is a body corporate, each director shall be indemnified out of the assets of the Fund in respect of all liability incurred while acting as a director of the Trustee. This includes things done or omitted to be done.

Trustees not to be Subject to Direction

12.1 **Directions:** Where the Superannuation Conditions prohibit it, the Deed shall, notwithstanding anything contained in it, not permit the Trustees to be subject, in the exercise of any of the Trustees' powers under the Deed, to direction by any other person.

12.2 **Direction taken to be a request:** If any provision in this Deed is inconsistent with the preceding sub-paragraph then, notwithstanding such provisions, the Trustees shall treat the direction as a request and the Trustees shall not be bound by such provision or request.

Investments

Investment Strategy: If required to do so by the Superannuation Conditions, the Trustees must formulate and give effect to an investment strategy in accordance with the Superannuation Conditions.

Loans: The Trustees may not lend money to Members unless the Superannuation Conditions permit loans to members.

Acquisition of assets from members: The Trustees must not intentionally acquire an asset from:

- (a) a member of the Fund; or
- (b) a relative of a member of the Fund.

unless the Superannuation Conditions permit.

Borrowing: The Trustees may borrow money or maintain an existing borrowing of money if the Superannuation Conditions permit.

In-house assets: The Trustees must take all reasonable steps to ensure that the in-house assets rules applicable to the fund, if any, are complied with and may only invest in in-house assets if permitted by the Superannuation Conditions. Subject to those conditions the Trustees may continue to hold any existing in-house asset.

Arms' length dealing required: The Trustees must not, if prohibited by the Superannuation Conditions, invest money of the fund unless the Trustees and the other party to the relevant transaction are dealing with each other at arms' length in respect of the transaction.

Power to invest as if natural persons: The Trustees may make any investment that a natural person may make. The Trustees have power to vary or transpose any of the investments so made. The Trustee's power of investment is subject to the Superannuation Conditions and any contrary provision in the Deed.

Other investments: Without limiting the generality of the preceding subparagraph but subject to it, the Trustees may invest in: -

- (a) any investment authorised by the laws of Australia or of any of its States or Territories for the investment of trust funds;
- (b) the purchase of or subscription for preference or other shares or stock or preference or other share or stock options in any company incorporated in Australia or in any other country;
- (c) the purchase of units or sub units of property or other investment trusts or other common fund;
- (d) deposits with any bank, life insurance company or building society or on loan to any company, organisation or person not being a Member;
- (e) policies of insurance, assurance, endowment, deposit administration or investment;
- (f) the purchase of annuities and deferred annuities from a life insurance company or other organisation;

- (g) the purchase of any real estate in Australia;
- (h) deposits with or loans to an Employer;
- (i) any other investment whether or not similar to any of the foregoing which the Trustees consider to be appropriate.

Nominees for Trustees: Any investment may be held in such names including the name of a nominee (whether an individual or corporation) as the Trustees from time to time shall determine, subject to the Superannuation Conditions.

Continuation of loans to members: The Trustees may continue any loans transferred in respect of a Member from another superannuation fund under conditions which will not cause the Fund to fail to satisfy the Superannuation Conditions.

Member directed investments: If the Superannuation Conditions do not prohibit it, the Trustees may at their absolute discretion, upon the written request of a Member enter into such arrangements with that Member in respect of the investment of funds standing to the credit of that Member as may be agreed between them.

Complaints

Establishment of complaints procedure: If required by the Superannuation Conditions, the Trustees will establish such reasonable procedures under which enquires and complaints may be dealt with.

Powers of Trustees

Discretion powers of Trustees: Subject to the Superannuation Conditions, the Trustees in the exercise of the authorities, powers and discretions hereby vested in them shall have an absolute and uncontrolled discretion and may exercise or enforce or delegate (by power of attorney or otherwise) all or any of the authorities, powers or discretions from time to time or may refrain from exercising all or any of such authorities, powers or discretions from time to time and their decision as to the interpretation and effect of this Deed shall be final and binding on all parties.

Trustees actions subject to Superannuation Conditions: The Trustees may only act in a manner which is not prohibited by the Superannuation Conditions.

Additional powers: Subject to the Superannuation Conditions, the Trustees also have the following powers -

- (a) to insure or re-insure any risks contingencies or liabilities of the Fund;
- (b) to open and operate a bank account at any bank and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (c) to institute or defend or otherwise deal with any legal proceedings in respect of the Fund;

- (d) to enter into any contract and do all such acts matters and things as the Trustees may consider necessary or expedient for any matter or purpose in respect of the Fund or this Deed;
- (e) to engage the services of any company, person or firm as the Trustees may consider necessary for the proper administration and management of the Fund or to obtain expert advice;
- (f) to appoint an Auditor of the Fund from time to time at such remuneration and on such other conditions as the Trustees think fit; and
- (g) to deduct and pay from the Fund the amounts of administration and other costs including any tax or duty payable by the Trustees in connection with the Fund and to debit any of the accounts of the Fund (including an account representing Member Financed Benefits) with such amounts in such manner as the Trustees may determine and which shall not cause the Fund to fail to comply with the Superannuation Conditions;
- (h) to deduct from any benefit or other payment hereunder any tax or duty payable whether from or in respect of it and whether payable by the person entitled thereto or the Fund and shall thereupon pay the said tax or duty to the relevant authority and the person shall be entitled to receive only the net benefit or payment after the deduction has been made;
- (i) such other powers as are appropriate to the fulfilment of the purposes of the Fund and its proper and efficient management and its compliance with an exercise of powers authorities and discretions available under the Superannuation Conditions.

Notification of significant adverse effects

Trustees to give notice of significant adverse effect: If the Trustees becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund, they must give such notice as may be required by the Superannuation Conditions.

Insurance

Life insurance: The Trustees shall have power from time to time to effect policies of insurance upon the life of any Member to secure payment upon death of the Member or the happening of any other contingency in respect of that Member of such amount as the Trustees in their absolute discretion think fit and to renew any such policies for such period as the Trustees may think fit and the Trustees shall have power to accept an assignment of any policies of insurance effected in respect of a Member.

17.2 **Annuities:** The Trustees shall have power from time to time to effect annuity or deferred annuity policies upon the life of any Member or any of the Member's Dependents of such amount as the Trustees shall determine and the Trustees shall have power to accept an assignment of such annuity or deferred annuity policies effected in respect of a Member.

17.3 **Powers:** Policies shall be issued in the names of or assigned to the Trustees and shall be held by the Trustees upon and subject to the

provisions of this Deed and the Trustees may enforce surrender sell or otherwise deal with any such policies as they shall in their absolute discretion think fit provided that the Trustees may also arrange for annuity or deferred annuity policies to be issued in the name of the beneficiary.

- 17.4 **Evidence to be provided by Member for insurance:** A Member shall provide any evidence that may be required from such Member in order to secure cover under any insurance policy and the Trustees shall not be bound to seek completion of such policy if evidence satisfactory to the insurance company is not provided.

Accounts

- 18.1 **Trustees to keep accounting records:** The Trustees may:
- (a) keep such accounting records as correctly record and explain the transactions and the financial position of the Fund.
 - (b) keep its accounting records so as to enable the preparation of the accounts and statements in accordance with the Superannuation Conditions.
 - (c) keep its accounting records so as to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Superannuation Conditions.
- 18.2 **Balance sheet:** The Trustees shall as soon as practicable after the expiration of each Financial Year cause to be drawn up-
- (a) a balance sheet as at the end of the Financial Year showing the assets and the liabilities of the Fund valued in accordance with the provisions of this deed giving a true and fair view of the state of the affairs of the Fund as at the end of the Financial Year;
 - (b) an income and expenditure account showing the financial activities of the Fund during the year;
 - (c) a profit and loss account of the Fund for the Financial Year showing the profit or loss arising from the activities of and investment of the Fund during the year and including but separately disclosing any surplus or deficiency arising from any revaluation of the assets of the Fund carried out during the year;
- 18.3 **Accounts and statements to be prepared:** The Trustees shall prepare such accounts and statements additional to those described in this paragraph as are required by the Superannuation Conditions or otherwise, as they think fit.
- 18.4 **Audit:** If required by the Superannuation Conditions, the Trustees shall ensure that the accounts and statements of the Fund are audited.
- 18.5 **Maintenance of reserves:** The Trustees may, if they consider it desirable to do so, maintain reserves of the fund.
- 18.6 **Records to be kept by Trustees:** The Trustees shall keep such minutes, records and reports as they consider appropriate for the proper administration of the Fund and such further records, minutes and reports as may be required by the Superannuation Conditions.

Payments to Contributors

- 19.1 **Payments out to employer-sponsor:** The Trustees may pay an amount or permit an amount to be paid out of the Fund to an employer sponsor if permitted by the Superannuation Conditions.

Rollover

- 20.1 **Trustees may pay rollovers:** The Trustees may pay benefits to an eligible rollover fund in accordance with the Superannuation Conditions.

Member Accounts

- 21.1 **Trustees to keep member and employer accounts:** Subject to complying with the Superannuation Conditions, the Trustees may keep such accounts in respect of member and employer contributions as they think fit.
- 21.2 **Power to retain prior categories of membership and vesting:** Where under any prior rules of this Fund or under the rules of any fund from which a benefit has been transferred in respect of a Member, provision was made for categories of membership or for vesting of contributions, the Trustees may, in their absolute discretion continue to apply or adopt those provisions or similar provisions accordingly.
- 21.3 **Lump sum and pension accounts may be kept:** The Trustees may cause to be kept in respect of each Member a Member Account which may consist of a Lump Sum Benefit Account or a Pension Benefit Account or both.
- 21.4 **Details of accounts:** Each Lump Sum Benefit Account or Pension Benefit Account may include -
- (a) an Employer Contribution Account showing -
 - (i) contributions by the Employer to that account;
 - (ii) sums which the Trustees determine are properly to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed and Rules;
 - (iii) the portion of the account that is currently irrevocably vested for the Member (the Vested Portion); and
 - (iv) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion);
 - (b) a Member Contribution Account showing -
 - (i) contributions by the Member to that account;
 - (ii) sums which the Trustees determine are properly to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed and Rules;
 - (iii) the portion of the account that is currently irrevocably vested for the Member (the Vested Portion); and

- (iv) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion); and
- (c) such other accounts or particulars of accounts as the Trustees deem to be necessary.

Valuation of the Fund and Allocation of Profits or Loss

- 22.1 **Valuation:** The Trustees shall as at the end of each Financial Year and may at any time value the assets and liabilities of the Fund and any surplus or deficiency including unrealised gains or losses revealed by such valuation shall be separately credited or debited to the profit and loss account of the Fund. For the purpose of effecting a valuation the Trustees shall have an absolute discretion in selecting the valuation basis for any asset or liability provided that such basis shall not be one which causes the Fund to fail to satisfy the Superannuation Conditions.
- 22.2 **Profit or loss distribution:** The Trustees may in their absolute discretion determine the amount of profit or loss of the Fund that shall be credited or debited to and amongst the Member Accounts and any other accounts that the Trustees nominate in such proportions and such manner as the Trustees shall decide and may set formulae or interest rates for this purpose provided that the Trustees shall in the exercise of their discretions under this paragraph act in a manner which is equitable as between the accounts within the Fund and is in accordance with the Superannuation Conditions. If the Trustees maintain reserves the Trustees may first determine what amount of the profit or loss is to be allocated to the reserve accounts, and the balance (if any) shall be credited or debited in accordance with the above.

Contributions

- 23.1 **Employer contributions:** Each Associated Employer shall contribute to the fund pursuant to an arrangement between such employer and the Trustees in respect of the employer's employee who is a member of the fund.
- 23.2 **Employer sponsors:** The arrangement referred to in the preceding paragraph is that the Employer shall pay or cause to be paid into the Fund from time to time on a basis agreed with the Trustees contributions or other moneys as may be required in accordance with the Rules and subject to compliance with the Superannuation Conditions provided however that the Trustees may refuse to accept a contribution.
- 23.3 **Member contributions:** The Members shall pay or cause to be paid into the Fund from time to time on a basis agreed with the Trustees, contributions or other moneys as may be required in accordance with the Deed and subject to compliance with the Superannuation Conditions.
- 23.4 **Employer not bound to see to application of contributions:** Any contributing employer shall not be bound to see to the due application by the Trustees of any money so paid.
- 23.5 **Salary deductions:** With the agreement of the Employer and Member a Member's contributions may be deducted from the Member's remuneration from time to time by the Employer. The Employer shall pay Member contributions so deducted to the Trustees in such manner and at such time as is agreed between the Employer and the Trustees.

23.6 **Suspension of contributions:** An Employer may with the consent of the Trustees, if required by the Superannuation Conditions, suspend or reduce its contributions to the Fund and in this event the Trustees may acting on the advice of an Actuary vary the benefits under the Deed for such of the Employees of the Employer who are Members provided that the Trustees shall not do anything which would result in the Fund failing to comply with the Superannuation Conditions.

23.7 **Employer ceasing to contribute:** An Employer may with the consent of the Trustees if required by the Superannuation Conditions, cease to contribute to the Fund on giving notice to the Trustees. Any Member in respect of whom contributions by Employers have ceased may also cease to contribute from the same date and any accrued benefits will be held within the Fund until they may be paid under the terms of the Deed.

23.8 **Temporary absence of member:** The Trustees and an Employer may agree that contributions by and in respect of a Member may be either continued or suspended during periods of temporary absence from the Member's employment with the Employer.

Benefits

24.1 **Maximum Benefits:** Members and Dependents shall be entitled to benefits in accordance with the provisions of the Deed but the liability of the Trustees (if any) to make payments to or for any Member, Dependent or Personal Representative shall not in any event exceed the lesser of:-

- (a) the benefits provided under the Deed in respect of such Member, Dependent or Personal Representative; and
- (b) the total balances of the relevant Member Accounts within the Fund.

24.2 **Additions:** Notwithstanding any provision in the Deed and subject to the Superannuation Conditions, the Trustees at the request of an Employer may from time to time or at any time commence to provide or add to:-

- (a) the vesting in or for Members within any Employer Contribution Accounts held for their benefit; or
- (b) any death, ill health or disability insurance policies upon the life of any Member.

24.3 **Vesting:** There shall vest in each Member:

- (a) the amounts required to be vested by the Superannuation Conditions;
- (b) the amounts, if any, already vested in that member pursuant to any rules of the Fund applicable prior to the date of this Deed;
- (c) any amount not otherwise vested which the Trustees with the consent of the Member's Employer agree shall be vested including any benefits or amounts transferred to the Fund as a vested benefit from another superannuation fund.

24.4 **Application of benefits:** The benefits payable to or in respect of Members, Dependents and Personal Representatives in accordance with the Deed

shall be paid or applied to or for the benefit of such one or more of those beneficiaries in the form of lump sums, pensions or annuities and in such manner as the Trustees may in their absolute discretion decide provided that such payments do not cause the Fund to fail to satisfy the Superannuation Conditions.

- 24.5 **Members request:** When a benefit is due to be paid the Member may request payment of such benefit as an immediate or deferred lump sum, Pension or annuity or the transfer of such benefit and while the Trustees will take due consideration of these requests the Trustees decision with respect to the form of any benefit payment will be final.
- 24.6 **Designated beneficiary:** A Member wishing to designate a Dependent as a beneficiary or to change such designation shall do so in writing to the Trustees in the form which the Trustees may from time to time approve. A notice so given does not limit the Trustee's discretion under this Deed.
- 24.7 **Preserved Benefits:**
- (a) Any benefit which is subject to preservation or has been preserved under the Superannuation Conditions, an agreement made by the Trustees or this Deed and the Rules, shall not be paid to or in respect of the Member at a date earlier than allowed from time to time under the Superannuation Conditions, the agreement or the Deed and the Rules.
 - (b) The Trustees may transfer any preserved benefit to another superannuation fund nominated by the Member, an approved deposit fund nominated by the Member, a deferred annuity nominated by the Member or such other superannuation entity as the Superannuation Conditions allow.
 - (c) If the Fund holds benefits that were not the subject of preservation prior to the date of this Deed then nothing in this Deed shall operate in a way which has the effect of preserving those benefits unless the Superannuation Conditions require it.
- 24.8 **Member otherwise has no interest:** Except as provided in this Deed and subject to the Superannuation Conditions, a Member, Dependent or Personal Representative shall have no right to or interest in the Fund.
- 24.9 **Trustees to determine amount to pay benefits:** Upon the happening of an event as the result of which there arises an absolute or contingent right to the payment of a benefit in accordance with this Deed to or in respect of a Member, Dependent or Personal Representative either immediately or at some future date the Trustees shall determine the amount required to meet that liability and any balance of the Member Accounts in excess of that amount shall be transferred to the Forfeited Benefits Account.
- 24.10 **Member to provide evidence of entitlement:** The payment or any benefit shall be subject to the person claiming the same producing such evidence, doing such acts and executing such documents as the Trustees may reasonably require and the Trustees may postpone the payment of any benefit until the requirements of this paragraph have been met.
- 24.11 **Trustee may transfer assets in specie:** The Trustees 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 benefit in lieu of payment of the same in money. The Trustees shall take into account such associated costs, taxes or other expenses of such transfer as they think fit and make adjustments accordingly.

24.12 **Unclaimed monies:** If the Trustees cannot find a person entitled to a benefit then that benefit or part of that benefit may be paid or otherwise dealt with by the Trustees in such manner as the Superannuation Conditions permit.

24.13 **Unpaid benefits:** In the circumstances prescribed by the Superannuation Conditions the Trustees may pay an unpaid benefit to an eligible rollover fund, or to the Commissioner or other body prescribed by the Superannuation Conditions.

Forfeited Benefits Account

25.1 **Forfeited benefits account to be kept:** The Trustees shall keep an account for the receipt of amounts forfeited from Member Accounts and any other credit balances that cannot be otherwise allocated under the provisions of the Deed. Such account shall be known as the Forfeited Benefits Account.

25.2 **Application of forfeited benefits:** The Trustees shall in their absolute discretion apply amounts held in the Forfeited Benefits Account in the manner and to the purposes permitted by the Superannuation Conditions and, if permitted, these shall include:

- (a) welfare benefits to assist in events of financial hardship, sickness, accident or other misfortune causing hardship;
- (b) supplementary benefits for retired Members;
- (c) additional benefits for current Members on an equal basis, or on a pro rata basis among all Members or, among Members on the basis of economic needs;
- (d) payment of administrative expenses of the Fund;
- (e) payment of a Member's own contribution to relieve hardship;
- (f) payment to an Employer in recompense for loss or damage as the consequence of employee misconduct;
- (g) payment to an Employer in the form of assessable income.

Provided that the Trustees shall not apply any amount so held which is attributable to the contributions of an Employer to the provision of any benefit or advantage for any Member who is not its Employee without the consent of that Employer and where the Trustees shall have given notice of not less than twenty one (21) days to an Employer of the Trustees intention to so apply any amount and the Employer shall not have responded the Employer shall be deemed to have consented to that application.

Benefits charged with payments due to employer

26.1 The following provisions are subject to the Superannuation Conditions and apply to the extent to which they are not inconsistent with it.

26.2

Charge: Notwithstanding anything else herein contained, though subject to the Superannuation Conditions, the benefit payable in respect of a Member shall be charged with the payment to the Associated Employer of that Member of -

- (a) all amounts owing by him to that Employer;
- (b) any loss incurred by that Employer in consequence of the Member's fraud, dishonesty or misconduct; and
- (c) the costs of all proceedings civil or criminal incurred by that Employer in recovering any amount owing by him to that Employer or in respect of the Member's fraud, dishonesty or misconduct.

26.3

Evidence: A statement in writing signed by that Employer or by two directors (if a company) or by two partners (if a firm) of that Employer stating the amount charged and requesting that the same be paid to that Employer shall be sufficient authority to the Trustees to pay such amount to that Employer.

26.4

Lien: Notwithstanding any other provision contained in this Deed to the contrary, though subject to the Superannuation Conditions, the Trustees shall have at the date of payment of a benefit to a Member a lien over that benefit in respect of:-

- (a) all amounts owed by the Member to the Fund; and
- (b) any loss or expense incurred by the Trustees in consequence of the Member's fraud, dishonesty, misappropriation or other misconduct in respect of the Fund including the costs to the Trustees of recovering the same where the loss, expense or costs have been quantified and constituted a debt owing by the Member to the Trustees in their capacity as Trustees.

26.5

Certificate: A certificate signed by the Trustees stating the amount of the lien over the Member's benefit claimed by the Trustees shall be prima facie evidence in the hands of the Trustees against all claimants of the amount owing to the Fund under the preceding sub-paragraph and shall be sufficient authority to the Trustees to retain in the Fund out of the amount of benefit to which the Member would otherwise be entitled the amount of such lien and the balance, if any, of the benefit which is not so retained in the Fund shall be paid to or in respect of the Member.

Application of Benefits in Certain Cases

27.1

Member's insanity and other events: This provision applies separately to vested and non-vested benefits. If the Superannuation Conditions do not prohibit it, if a Member in the Trustee's opinion:-

- (a) is declared an insane or incapable person; or
- (b) does or attempts to do or suffers any act or thing or if any event happens whereby if any benefit were payable to such Member absolutely that Member would be deprived of the right to receive it or any part of it or it would be disposed of or dealt with otherwise than in accordance with this Deed; or

- (c) is suffering from any physical or mental disability which in the opinion of the Trustees renders the Member unable to manage his or her own affairs;
- (d) has failed to pay a judgment debt for a period of 30 days from the date of judgment.

the member shall cease to be presently or presumptively entitled to his or her benefit or such part of that benefit as the Trustees in their absolute discretion determine.

27.2 **Payments:** In any of the events mentioned in the preceding sub-paragraph and if the Superannuation Conditions do not prohibit it, the Trustees may pay to the Dependent of the Member:

- (a) the whole or such part of the benefit, or
- (b) any vested benefit

as the Trustees, in their absolute discretion, determine and may apply the balance of such benefits then remaining in the hands of the Trustees for the maintenance and support of such Member or Dependent as the Trustees in their absolute discretion may determine provided that any such payment or application by the Trustees for the maintenance and support of a Member while such Member continues to be employed shall be made only for the purposes of and in such circumstances as warrant the relief of hardship as may be permitted by the Superannuation Conditions. Any amounts not applied under this paragraph may be transferred to the Forfeited Benefits Account by the Trustees.

27.3 **Discharge:** The payment or application of any moneys pursuant to the preceding sub-paragraph shall be a complete discharge to the Trustees therefor.

Transfer of Benefits

28.1 **Trustee to make arrangements with prior employer and trustee:** The Trustees may at the request of an Employee or Member and with the consent of his or her Employer, if any, make such arrangements as they think proper with that previous employer or the trustee of any other superannuation fund for the payment or transfer to the Fund of moneys or assets and other rights and benefits of and arising in relation to the membership by such person in such other superannuation fund and may make arrangements about any matter in relation to such payment or transfer which in their opinion is necessary and may also make such arrangements as are necessary to enable such Employee to be admitted to membership of the Fund, if that person is not a Member.

28.2 The Trustees shall hold any moneys or assets so paid or transferred to them from another superannuation fund according to the terms and conditions of this Deed.

28.3 **Application of transferred amounts:** On any such payment or transfer of monies or assets -

- (a) the amount of the entitlement of the Member concerned shall be credited to his or her Member Account in the manner resolved between the Member, the Trustees and the Trustees of the Fund from which the Member is transferring provided that any such

monies or assets which represent a benefit which has vested in the Member shall be credited to his or her account as a vested benefit;

- (b) the amount which by the terms and rules of such other superannuation fund is required to be preserved shall be identified and held by the Trustees as a Preserved Portion under this Deed.
- (c) except to the extent required by the Superannuation Conditions, the money or assets so transferred shall not be subject to preservation. Where the Fund holds benefits that were not the subject of preservation in a prior Fund then nothing in this Deed shall have the effect of preserving those benefits unless the Superannuation Conditions require it.

28.4 **Application of benefits on member leaving Fund:** The money and assets comprising any benefit payable to a Member on leaving the Fund may with the approval of such Member be paid or transferred to or invested in (as the case may be) -

- (a) another superannuation fund nominated by the Member of which such Member is or intends to become a member and which satisfies the Superannuation Fund Conditions; or
- (b) an approved deposit fund nominated by the Member which satisfies the Approved Deposit Fund Conditions set out in the Superannuation Conditions; or
- (c) a deferred annuity nominated by the Member which does not pay benefits except in circumstances in which by the Superannuation Conditions or by this Deed benefits are payable to that person;
- (d) such other superannuation entity as the Superannuation Conditions permit.

The receipt of the trustee of that other fund or scheme or the corporation issuing the policy shall be a complete discharge to the Trustees in respect of any money or assets so paid or transferred.

28.5 **Application of preserved benefits:** The money and assets comprising any Preserved Portion of a benefit payable to a Member at a date after his or her leaving the Fund may be:

- (a) retained in the Fund; or
- (b) transferred to a superannuation entity provided that such transfer is not inconsistent with the Superannuation Conditions.

The receipt of the Trustees of that other fund or scheme or the corporation issuing the policy shall be a complete discharge to the Trustees in respect of any money or assets so paid or transferred.

Disclosure of Information

29.1 The Trustees shall provide such information, reports or otherwise to such persons, superannuation entities or otherwise as may be necessary to comply with the Superannuation Conditions.

Notices

- 30.1 Notices may be given by the Trustees to Members and Dependents either personally or by sending the same by pre-paid letter posted to the address last known to the Trustees or the address last known to the Employer.

Associated Employers

- 31.1 **Approval of associated employers:** The Trustees may admit to the Fund any company, person or firm. Such Associated Employer shall make application in a form approved by the Trustees and on admission the Associated Employer shall be deemed to be bound by the Deed and the Rules.
- 31.2 Subject to the Superannuation Conditions an Employer shall cease to be an Associated Employer on:-
- (a) the Employer ceasing to be an Employer of any Member; or
 - (b) the Employer determining to cease contributing to the Fund; or
 - (c) the Employer's becoming bankrupt or being placed into liquidation or receivership or ceasing to carry on a business.
- 31.3 A Member who is an employee of an Employer that has ceased to be an Associated Employer shall not by reason of that event cease to be a Member.

Employers Rights Not Restricted

- 32.1 **Employer's rights unaffected:** Nothing herein contained shall in any way restrict the rights of an Employer to determine the employment of a Member (or remove from office any director who is a Member) at any time and the fact that such Member is a Member is not to be taken as a guarantee of his employment, or continuance in office.
- 32.2 **Damages:** The benefits to which a Member might claim to be entitled hereunder shall be disregarded in assessing damages in any action which may be instituted by such Member against the Employer in respect of his dismissal.
- 32.3 **Workers compensation:** Nothing contained in this Deed shall affect the right of a Member or his Personal Representative or other person to claim damages or compensation at Common Law or under Workers' Compensation Acts or any other Statute in force governing compensation to a Member injured or dying from any accident arising out of and in the course of his employment with the Employer and any benefits payable hereunder shall not be reduced by reason of any payment that may be made in respect of such damages or compensation.

Winding up of Fund

- 33.1 **Winding up:** Subject to the Superannuation Conditions and if so required, with the Trustees' consent, the Fund shall be wound up by the Trustees as at a date determined by them on the occurrence of any of the following events:-
- (a) if there are no assets of the Fund; or

- (b) if there are no Members of the Fund and no Associated Employers; or
- (c) if in respect of each Associated Employer an order is made or a resolution is passed for the winding up of such Employers and there are no members.

33.2

Priorities: Subject to the Superannuation Conditions and if so required, with the Trustees' approval, the assets of the Fund on its winding up shall be applied in the following order of priority and for the following purposes to the extent to which those assets will allow:-

- (a) firstly, in the payment of liabilities in respect of the administration and other costs associated with the winding-up proceedings;
- (b) secondly, in the discharge of all liabilities other than liabilities in respect of benefits payable to or in respect of Members;
- (c) thirdly, in securing the minimum guaranteed benefits of members;
- (d) fourthly, in securing for each Member the amounts standing to the credit of -
 - (i) his Member Contribution Accounts;
 - (ii) the Vested Portion of his Employer Contribution Accounts; and
 - (iii) any Preserved Portion of his Member Accounts in excess of the amount secured under (i) and (ii) above; and
- (e) lastly, in the distribution of any remaining balance to such of the Members and Dependents, and to any of the Employers in such proportions as in the opinion of the Trustees is appropriate in the circumstances and in accordance with the Superannuation Conditions.

33.3

Subject to vesting and preservation: Subject to the Superannuation Conditions and in so far as it is within the power of the Trustees to so do, in dealing with the benefit of any Member in a winding up of the Fund the Trustees shall observe all the provisions of this Deed relating to the vesting, transfer, payment and preservation of benefits and shall not act otherwise than as permitted by those provisions.

Schedule

The Rules

Interpretation

1.1 **Matters covered by Rules:** These Rules relate to the following matters concerning the Fund:-

- (a) membership of the Fund;
- (b) the kinds of benefit provided by the Fund;
- (c) the circumstances of payment of benefits;

1.2 **Interpretation:** In these Rules the following words shall have the following meanings:-

- (a) "Ancillary Benefits" means (subject to the Superannuation Conditions):-
 - (i) Benefits payable (including benefits payable on total and permanent disablement, incapacity, redundancy, retrenchment and early retirement) to a Member on termination of service prior to retirement;
 - (ii) Death Benefit payable to a Member in whole or in part to a Member's estate;
 - (iii) Income Benefit payable to a Member while unable to carry out his previous normal work duties;
 - (iv) Such other benefits as are approved by the Commissioner from time to time as ancillary or like benefits.
- (b) "Death Benefit" means the Benefit payable under Rule 3.4.
- (c) "Early Retirement Benefit" means the Benefit payable under Rule 3.2.
- (d) "Retirement Benefit" means the Benefit payable under Rule 3.1.
- (e) "Temporary Incapacity Benefit" means the Benefit payable under Rule 3.5.
- (f) "Withdrawal Benefit" means the Benefit payable under Rule 3.3.

Membership

2.1 **Eligibility:** Any Eligible Person may make application in writing to the Trustees in a form prescribed by the Trustees from time to time to join the Fund.

2.2 **Trustees may refuse:** The Trustee may accept or refuse any application for membership in its absolute discretion and shall not be required to assign any reason for any refusal.

2.3 **Trustees to give notice:** A person shall become a Member when the Trustees give notice in writing to that person that such application has

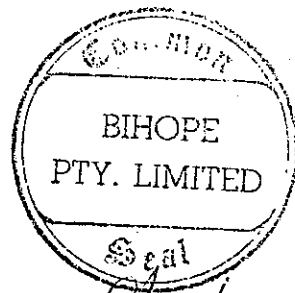
been approved and accepted, however the initial members do not have to be notified.

- 2.4 **Member bound by Deed:** A person upon becoming a Member shall be deemed to have consented to and be bound by the provisions of this Deed and Rules.
- 2.5 **Cessation of membership:** A person shall cease to be a Member on the happening of the first of the following:-
- (a) death;
 - (b) when the total of all amounts payable under this Deed and Rules in respect of the Member's membership has been paid; or
 - (c) when under this Deed and Rules any benefit payable to the Member or any person on the Member's account ceases to be payable.

Benefits

- 3.1 **Benefit payable on Retirement:** In the event of a Member:
- (a) ceasing to be employed on or after his retirement date; or
 - (b) reaching retirement date;
- there shall be payable a Retirement Benefit which is comprised of the total balance of his Member Accounts.
- 3.2 **Early retirement:** In the event of a Member retiring within the period of ten (10) years prior to his Retirement Date there shall be payable an Early Retirement Benefit of an amount determined by the Trustees and being not less than the amount of benefits which are vested in that Member.
- 3.3 **Other circumstances:** In the event of a Member withdrawing from the Fund there shall be payable a Withdrawal Benefit being of an amount determined by the Trustees and being not less than the amount of benefits which are vested in that Member.
- 3.4 **Death before retirement:** In the event of death of a Member prior to his Retirement Date there shall be payable a Death Benefit being a lump sum in an amount determined by the Trustees and being not less than the amount of benefits which are vested in that Member.
- 3.5 **Temporary incapacity:** Where during any period a Member suffers from temporary incapacity the Trustees may pay a Temporary Incapacity Benefit in an amount or amounts and upon terms that are not inconsistent with the Superannuation Conditions.
- 3.6 **Ancillary benefits:** The Trustees may at their sole discretion, but only if permitted by the Superannuation Conditions make payment of Ancillary Benefits in such manner as the Superannuation Conditions permit.
- 3.7 **Other benefits:** If the Superannuation Conditions permit, a benefit of such sum as the Trustees, (with the agreement of the Employer, if any) of the relevant member approves. Such benefit may be paid in such manner and at such time as the Trustees determine and the

IN WITNESS whereof the parties hereto have set their hands and affixed their seals at the place and on the date appearing above.



THE COMMON SEAL of
Bihope Pty Ltd

(A.C.N. 002 999 288)

was hereunto affixed by order
of the Board of Directors in
the presence of:

X Remigio Nieto
Remigio Nieto, Director.

X Ellen Nieto
Ellen Nieto, Director

SIGNED SEALED and DELIVERED by
Nieto, Remigio

the presence of:

ALAN PASMAN X Remigio Nieto

X [Signature]
(Contract Administrator)

SIGNED SEALED and DELIVERED by
Nieto, Ellen

the presence of:

ALAN PASMAN X Ellen Nieto
(Contract Administrator) Ellen

X [Signature]
(Contract Administrator)