

# DEED OF VARIATION

of the

## MIRAMS NOMINEES SUPERANNUATION FUND 1995

BY

THE TRUSTEES

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*APPENDIX 1 Benefit Election Form*

*APPENDIX 2 Binding Death Benefit Nomination Form*

## DEED OF VARIATION OF SUPERANNUATION TRUST DEED

THIS DEED OF VARIATION is made the 8th day of November, 2012.

### PARTIES:

BETWEEN: Francis John Mirams of 2 Erith Lane, Kalorama in the State of Victoria  
and  
Stephanie Vera Mirams of 2 Erith Lane, Kalorama in the State of Victoria  
  
(the Trustees)

### WHEREAS:

- A. A superannuation fund (referred to as the **Fund**) was established by a deed (referred to as the **Original Trust Deed**) bearing the date referred to as the commencement date shown in the schedule (**Schedule**) to this deed (**Deed of Variation**). The Fund is known by the name shown in the Schedule to this Deed of Variation.
- B. By letter dated 15th November, 2002 to the Trustees, the principal employer of the Fund ceased to contribute to the Fund and therefore ceased to act as principal employer.
- C. Pursuant to Clause 38 of the Trust Deed, the Trustee is empowered to vary the trust without the consent of the principal employer, where there is no principal employer of the Fund.
- D. The Trustees are the current trustees of the Fund.
- E. The Trustees have determined to vary the Original Trust Deed in order to accommodate and comply with the requirements of a number of changes in legislation pertaining to the operation of superannuation funds in the manner set out in this Deed of Variation.
- F. Clause 40 of the Original Trust Deed which allows for variations to the Original Trust Deed is set out in the Annexure marked with the letter "A" attached to this Deed of Variation.
- G. The Trustees wish to add to and alter (**Vary**) the Original Trust Deed of the Fund in the manner set out in this Deed of Variation which Variation is in accordance with the requirements specified in Clause 40 and does not infringe any limitation set out in that clause.
- H. This Deed of Variation is made pursuant to the powers of the Trustees under the Original Trust Deed for the Fund.

### NOW IT IS HEREBY AGREED:

#### Definitions and Interpretations

- 1. All words and expressions used in this Deed of Variation, including the recitals, shall have the meaning that is attributed to those words and expressions in this Deed of Variation unless the context otherwise requires.
- 2. In this Deed of Variation words importing the singular shall include the plural and vice versa and words importing a gender include all genders.
- 3. In this Deed of Variation, a reference to an act or regulation of a Parliament of the Commonwealth or any State or Territory shall be construed as an act or regulation as it may be amended, replaced or consolidated from time to time for the time being in force.

#### **Replacement of Original Trust Deed**

4. The existing provisions of the Original Trust Deed are deleted in their entirety (including any schedules and appendices attached) and replaced with Clauses 1 to 47 inclusive contained in the Annexure marked with the letter "B" attached to this Deed of Variation.

#### **Confirmation**

5. The Trustees confirm the terms of the Original Trust Deed in all other respects and it is hereby declared that no break or discontinuity shall have occurred in the constitution of the Fund by virtue of entering into this Deed of Variation.

#### **Governing Law**

6. This Deed of Variation shall be governed by and construed under the laws of the jurisdiction shown in the Schedule to this Deed of Variation and the Trustees submit to the non-exclusive jurisdiction of the courts in that jurisdiction and any court hearing appeals from those courts.

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EXECUTED AS A DEED

TRUSTEES

SIGNED, SEALED and DELIVERED by  
the said FRANCIS JOHN MIRAMS in the  
presence of:

} Francis J Mirams

Dynette McGrath

WITNESS

SIGNED, SEALED and DELIVERED by  
the said STEPHANIE VERA MIRAMS in  
the presence of:

} Stephanie V Mirams

Dynette McGrath

WITNESS



## **SCHEDULE**

COMMENCEMENT DATE: 1st May, 1995

NAME OF FUND: Mirams Nominees Superannuation Fund 1995

GOVERNING LAW: Victoria

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ANNEXURE "A"

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Clause 40 of the Trust Deed which allows for variations to the Trust Deed is set out hereunder

**40. VARIATION OF TRUST DEED**

The provisions of this Deed, including this Clause may be added to, amended, altered, modified, rescinded or varied (the "Variation") from time to time by the Trustee with the consent of the Principal Employer which Variation may be prospective or retrospective and which shall be effected on the following basis:

- (a) The Variation shall be:-
- (i) by oral declaration or written resolution of the Trustee and the Principal Employer, and a certified copy of minutes of a meeting of the Trustee and of the Principal Employer confirming any such oral declaration or a certified copy of any such written resolution will be furnished to the Commissioner if required by the Relevant Requirements; or
  - (ii) by Deed executed by the Trustee and the Principal Employer and a copy of such Deed will be forwarded to the Commissioner if required by the Relevant Requirements.
- (b) On any Variation being effected, the Trustee will as soon as practicable thereafter advise the Members whose entitlements or rights are affected by the Variation in writing of the nature and purpose of the Variation and the effect on their entitlements or rights.
- (c) No Variation shall have the effect of:-
- (i) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Fund which have arisen prior to the Variation being effected; or
  - (ii) reducing the amount of an entitlement other than an entitlement referred to in paragraph (i) above that is or may become payable in relation to a period before the date of the Variation,
- unless:
- A. the reduction is required because of, and does not exceed the value of any Taxation payable on the taxable income of the Fund; or
  - B. the reduction is required only to enable the Fund to comply with the Relevant Requirements; or
  - C. other than in respect of the Member's Vested Contributions the Member so affected consents in writing to the reduction; or
  - D. the Commissioner consents in writing to the reduction.
- (d) **Further limitation on Variation**
- If so required under the Relevant Requirements, this Deed cannot be varied in such a way that:-
- (i) a person or a body other than a Constitutional Corporation would be eligible to be appointed trustee unless the Deed provides, and continues to provide after the amendment is made, that the fund has, as its sole and primary purpose, the provision of old-age pensions; or
  - (ii) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Deed provides, and will continue to provide after the amendment is made, that the trustee must be a Constitutional Corporation and the Trustee is, in fact, a Constitutional corporation. .

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ANNEXURE "B"

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## **OPERATIVE PROVISIONS:**

Now this deed witnesses as follows:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Deed the following words and expressions, unless the context requires otherwise or the contrary intention appears, have the meanings respectively assigned to them:—

**Account-based Pension** has the same meaning as in Regulation 1.03 of the Regulations.

**Actuary** means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia or of any body formed in reconstruction of or in succession to that Institute.

**Allocated Pension** has the same meaning as in Regulation 1.03 of the Regulations.

**Annuity** includes a benefit provided by an Annuity Provider, under the Regulations, to be an annuity for the purposes of SIS.

**Annuity Provider** means any organisation which has the capability of providing an Annuity and which is approved or recognised as such by the Relevant Law.

**Approved Fund** includes a fund or benefit arrangement other than this Fund including without limitation another Complying Superannuation Fund, an Approved Deposit Fund, an Annuity, an Eligible Rollover Fund, a Pension Fund or a Retirement Savings Account into which or from which assets of the Fund can be transferred without causing the Fund to be in breach of or to fail to comply with the Relevant Law.

**Approved Deposit Fund** in relation to a year of income means a complying approved deposit fund within the meaning of Section 43 of SIS.

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

**Beneficiary** includes a Member, Dependant or other person presently and absolutely entitled to receive a Benefit under this Deed.

**Benefit** means any amount which is payable by the Trustee from the Fund in accordance with this Deed to or in respect of a Member or Beneficiary.

**Child**, in relation to a person, includes an adopted child, an ex-nuptial child or a step-child of that person.

**Circulating Resolution** means the decision-making process by which:—

- (a) a proposed resolution is delivered in a document to each Trustee entitled to vote on that proposed resolution; and
- (b) each Trustee indicates in writing if he/she is in favour of or against the proposed resolution and signs and dates the document and forwards it as directed; and
- (c) the proposed resolution shall be deemed to have been dealt with at a meeting of the Trustees held on the day on which the document was last signed by a Trustee.

**Complying Superannuation Fund** in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Relevant Law.

**Concessional Contributions Cap** has the same meaning as in the Tax Act.

**Contributions** shall have the same meaning as defined in the Regulations.

**Corporations Act** means the *Corporations Act 2001* (C'th).

**Deed** means this deed including any schedules and appendices thereto.

**Dependant** means, in relation to a Member, the Spouse or Child of a Member or any other person who in the opinion of the Trustee was financially dependent on the Member at the date of his or her death or with whom the Member had an Interdependency Relationship.

**Directed Termination Payment** has the same meaning as in the Tax Act.

**Early Retirement** refers in relation to a Member to circumstances where:-

- (a) the Member has reached Preservation Age but not age 65 years; and
- (b) is taken to have retired pursuant to the Regulations.

**Eligible Person** means a person who is resident in Australia and is not prohibited under the Relevant Law from becoming a Member.

**Eligible Rollover Fund** has the same meaning as in the Regulations.

**Employee** has, in relation to an Employee, the same meaning as in the Superannuation Guarantee Legislation.

**Employer** has, in relation to an Employer, the same meaning as in the Superannuation Guarantee Legislation.

**Excess Non-Concessional Contributions Tax** has the same meaning as in the Tax Act.

**Full Time** in relation to being Gainfully Employed, means being Gainfully Employed for at least 30 hours per week.

**Fund** means the Fund whose name appears in the Schedule attached hereto.

**Gainful Employment** in relation to a Member means full-time or part-time engagement in any business, trade, profession, vocation, calling, occupation or employment for gain or reward to the extent required by the Relevant Law.

**Interdependency Relationship** has the same meaning as in SIS and/or the Regulations.

**Life Expectancy** has the same meaning as **Life Expectation Factor** defined in Section 27H of the Tax Act as in force before 1 July 2007.

**Listed Security** means a security listed for quotation in the Official List of a licensed market within the meaning of section 761A of the Corporations Act an approved stock exchange within the meaning of Section 470 of the Tax Act or market exempted under section 791C of the Corporations Act.

**Maximum Splittable Amount** has the same meaning as in the Regulations.

**Member** means a person who has been admitted to membership of the Fund and has not ceased to be a Member under Clause 22.7.

**Member's Accumulation Account** means the account in the books of the Fund in the name of a Member established in accordance with this Deed.

**Non-Commutable Allocated Pension** has the same meaning as in the Regulations.

**Non-Commutable Income Stream** means a Non-Commutable Allocated Pension, a Non-Commutable Pension or a Transition to Retirement Income Stream.

**Non-Commutable Pension** has the same meaning as in the Regulations.

**Non-Concessional Contributions Cap** has the same meaning as in the Tax Act.

**Non-Member Spouse** means a person who is:-

- (a) a spouse of former Spouse of a Member; or
- (b) a Non-Member Spouse within the meaning of the term under Part VIII B of the Family Law Act 1975,

and in respect of whom the Trustee has received notice of a payment split within the meaning of that Act

**Other Relevant Commonwealth Government Laws** means the provisions contained in each of the Social Security Act 1991 and the Veterans Entitlement Act 1986.

**Participating Employer** means any corporation, partnership or person which or who may be entitled to make Contributions in respect of its Employees.

**Part Time** in relation to being Gainfully Employed, means being Gainfully Employed for at least 10 hours and less than 30 hours each week.

**Pension**, except in the expression **old-age pension**, includes the amount of a Benefit payable by instalments that is taken to be a pension under SIS and/or the Regulations.

**Pension Account** means the account in the books of the Fund in the name of a member established in accordance with Clause 35 of this Deed.

**Pension Fund** means any fund which pays a Benefit in the form of a Pension.

**Pension Age:-**

- (a) in relation to a person who is a veteran within the meaning of the Veterans' Entitlement Act 1986 - has the same meaning given to that expression in Section 5QA of that Act; or
- (b) in relation to a person to whom paragraph (a) of this definition does not apply - has the same meaning given to that expression by Subsections 23(5A), (5B), (5C) or (5D) of the Social Security Act 1991.

**Pensioner** means a Member or a Beneficiary who is entitled under this Deed to receive a Pension.

**person** includes company, corporation, firm or body of persons.

**power** means a power, right, discretion or authority of whatsoever nature and, whenever a power is conferred on the Trustee, a Participating Employer, an Employer, a delegate of the Trustee or any other person or persons, the relative provision of this Deed shall be read as if the words **at any time or from time to time** were added.

**Preservation Age** means:-

- (a) for a person born before 1 July 1960 – 55;
- (b) for a person born 1 July 1960 to 30 June 1961 – 56;
- (c) for a person born 1 July 1961 to 30 June 1962 – 57;

- (d) for a person born 1 July 1962 to 30 June 1963– 58;
- (e) for a person born 1 July 1963 to 30 June 1964 – 59;
- (f) for a person born after 30 June 1964 - 60

**Regulations** means the regulations made under SIS.

**Regulator** means in respect of a provision of the Relevant Law:–

- (a) the Australian Prudential Regulatory Authority if the provision is administered by the Authority in respect of the Fund; or
- (b) the Australian Securities and Investments Commission if the provision is administered by the Commission in respect of the Fund; or
- (c) the Commissioner of Taxation if the provision is administered by the Commissioner in respect of the Fund; or
- (d) such other authority having responsibility for the administration of the provision in respect of the Fund.

**Related Party** has the same meaning as in SIS.

**Relative** has the same meaning as in SIS.

**Release Authority** means a release authority as defined in the Tax Act or a Transitional Release Authority as the case requires.

**Relevant Law** means any requirements under SIS, the Regulations, the Superannuation (Self-Managed Superannuation Funds) Taxation Act 1987, the Superannuation (Resolution of Complaints) Act 1993, the Tax Act, the Corporations Act 2001 and the general law relating to trusts and any other present or future legislation with which the Trustee must comply in order for the Fund -

- (a) to be eligible to pay income tax on its taxable income at a special rate applicable to Complying Superannuation Funds; or
- (b) to meet any other requirements of the Regulator,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively.

**Retirement Savings Account** has the same meaning as in the Retirement Savings Accounts Act 1997.

**Retiring Age** means in relation to a Member, the age of 65 years or such other age as may be agreed upon between the Trustee and the Member and is permissible under the Relevant Law.

**Reversionary Beneficiary** means a Beneficiary who was:–

- (a) a Dependant of a deceased Pensioner at the time of the Pensioner's death; and
- (b) nominated by a Pensioner as a reversionary beneficiary,

and in default of a nomination by the Pensioner, a Dependant who is:–

- (c) determined by the Trustee under Clause 34.5(f); and
- (d) is eligible to receive a Benefit in the form of a pension or Annuity upon the death of the Pensioner.

**RSA Regulations** means the regulations made under the Retirement Savings Account Act 1997.

**Self Managed Superannuation Fund** means a superannuation fund which complies with the definition contained in Section 17A of SIS.

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

**Splittable Contributions** has the same meaning as in the Regulations.

**Spouse** of a Beneficiary means the Beneficiary's husband, wife, widow or widower and includes a person who is not legally married to the Beneficiary but in the opinion of the Trustee lives (or immediately before the Beneficiary's death lived) on a genuine domestic basis as the husband or wife of the Beneficiary PROVIDED THAT where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable to the Spouse is to be divided between them.

**Superannuation Contributions Surcharge** has the same meaning as in the Superannuation Contributions Surcharge (Assessment and Collection) Act 1997 as amended from time to time.

**Superannuation Guarantee Legislation** means the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Act 1992.

**Superannuation Lump Sum** has the same meaning as in the Tax Act.

**Tax Act** means the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, and the *Income Tax (Transitional Provisions) Act 1997*, any regulations issued under those Acts, and any other Act or regulations which impose direct or indirect taxation liabilities or obligations on the Trustee or the Fund including such Acts which deal with any goods and services tax.

**Taxation** includes, without limitation, any:-

- (a) taxes, levies, imposts, duties, deductions or withholdings (howsoever called), interest, penalties, charges, fees or amounts imposed, levied, collected, withheld or assessed of any nature, whenever and however imposed, and all liabilities with respect to them which arise from any payment made to or by the Trustee under this Deed or any other instrument delivered under this Deed or in respect of any transaction entered into by the Trustee under its obligations under this Deed, and
- (b) taxes, interest, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed upon the Fund or the income, capital gains, profits, transactions, accounts, accruals, receivables, or any other increase in the worth or value of the Fund or the investments of the Fund.

**Taxed Splittable Contributions** has the same meaning as in the Regulations

**Total and Permanent Disablement or Totally and Permanently Disabled**, in relation to a Member:-

- (a) has the same meaning as that phrase (or the equivalent expression) has for the time being and from time to time in and for any policy or policies of insurance effected by the Trustee with an insurer in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member; or
- (b) where no policy mentioned in paragraph (a) has been effected or where such a meaning would cause the Trustee of the Fund to breach the Relevant Law, means ill-health (whether physical or mental) in relation to a Member, where the Trustee is reasonably satisfied that the Member is unlikely, because of ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**Totally but Temporarily Disabled** in relation to a Member:-

- (a) has the same meaning as that phrase (or the equivalent expression) has for the time being and from time to time in and for the purposes of a policy or policies of insurance; or
- (b) where no policy mentioned in paragraph (a) has been effected or where such a meaning would cause the Trustee of the Fund to breach the Relevant Law, ill-health (whether physical or mental) in relation to a Member (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be gainfully employed), that caused the member to cease to be gainfully employed but does not constitute a Total and Permanent Disablement.

**Transitional Release Authority** has the same meaning as in the Tax Act.

**Transition to Retirement Income Stream** has the same meaning as in the Regulations.

**Trustee** means the trustee or trustees for the time being of the Fund whether original, additional or substituted which are appointed by or in accordance with the provisions of this Deed or any other power enabling that to be done.

**Untaxed Splittable Contributions** has the same meaning as in the Regulations.

**Untaxed Splittable Employer Contributions** has the same meaning as in the Regulations.

## 1.2 Interpretation

### (a) Plural and gender of words

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

### (b) Headings to Clauses

The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this Deed.

### (c) Defined Words

For convenience, the first letters of words and expressions defined in this Deed 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.

### (d) Statutory Enactments

References to any statutory enactment shall be construed as references to that enactment as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for and any subordinate legislation issued under such statutory enactment. Any reference in this Deed to a provision of an enactment shall include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for and any subordinate legislation issued under that provision.

### (e) Requirements of Regulator and Relevant Law

Any references to any requirements, consents or approvals being required to be given by the Regulator or for the purposes of satisfying the Relevant Law shall mean requirements, consents or approvals of the Regulator or under the Relevant Law in order for the Fund to be eligible to be assessed for payment of income tax at a special rate applicable to superannuation funds.

### (f) Clauses

In this Deed a reference to a clause is a reference to a clause of this Deed.



(g) **Agreements and Documents**

A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.

(h) **Parts of speech**

Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

(i) **Joint and Several Liability**

Where an obligation in this Agreement is binding on more than one party to the Agreement the obligation is binding jointly and severally and nothing in the Agreement and no action by the recipient of the obligation will affect the right of the recipient to make any claim or commence any action or proceedings against any or all of the parties under the obligation.

## 2. **SIS - COMPLIANCE CLAUSE**

- 2.1 A provision of this Deed which is inconsistent with a provision of SIS does not operate to the extent of the inconsistency.
- 2.2 Clause 2.1 is subject to any declarations made or exemptions granted by the Regulator which are current in respect of or applicable to this Deed.
- 2.3 The Trustee shall give to the Regulator a notice required by Section 19 of SIS irrevocably electing that SIS is to apply to the Fund.
- 2.4 The provisions of this Deed are subject to the Relevant Law and, to the extent necessary for the Trustee and the Fund to qualify for concessional tax treatment, are deemed to incorporate the Relevant Law.
- 2.5 Clauses 2.1 to 2.4 prevail over all other provisions of this Deed including any that are expressed to prevail over them or any of them.

## 3. **CONSTITUTION OF THE FUND**

### 3.1 **Constitution of the Fund**

The Fund commenced on the commencement date referred to in the Schedule and there shall be no break or discontinuity in the constitution of the Fund by virtue of the adoption of this Deed.

### 3.2 **Continuation of Trustee**

The Trustee of the Fund at the time of the execution of this Deed undertakes to continue to act as Trustee of the Fund.

### 3.3 **Provisions of Deed Binding on Parties**

The Trustee, each Member, their heirs and successors and each Beneficiary respectively will be bound by the provisions of this Deed as Trustee, Member or Beneficiary as the case requires.

### 3.4 **Interests in the Fund**

A Member, Dependant or Beneficiary may have an interest in the Fund conferred on that person under the provisions contained in this Deed but shall not have any interest in any particular part of the Fund or in any investment of the Fund.

### 3.5 **Purpose of the Fund**

- (a) During such periods of time when the Trustee is a constitutional corporation, the sole or primary purpose of the Fund is the provision of Benefits to Members and Beneficiaries.

- (b) During such periods of time when the Trustee comprises or includes an individual, the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of SIS to Members and Beneficiaries.

#### 4. OPERATION OF THE FUND

4.1 The Fund shall comprise:-

- (a) contributions made by Members pursuant to this Deed;
- (b) contributions made by any Participating Employer pursuant to this Deed;
- (c) any other moneys or assets paid or transferred to the Fund from any other Approved Fund;
- (d) any other contributions, payments or components referred to in item 202.2 of Schedule 2 to the Regulations;
- (e) the income arising from any investments of the Fund and the accumulation thereof;
- (f) any accretions to or profits on realisation of investments; and
- (g) any other moneys, assets, policies of insurance or assurance, contracts of Annuity or investment which become subject to the trusts of this Deed.

4.2 It is the intention of the Trustee that the Fund shall comply with and be administered as a regulated fund within the meaning of SIS which is not a public offer superannuation fund within the meaning of SIS (**public offer superannuation fund**). Notwithstanding any provision in this Deed to the contrary the Trustee is empowered to do all things necessary to be done by it and to ensure the Fund does not become a public offer superannuation fund and satisfies the relevant provisions of the Relevant Law, and notwithstanding any provision to the contrary, the Trustee is 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 or a non complying superannuation fund as defined in SIS.

#### 5. TRUSTEE

5.1 Subject to this Deed, the Trustee shall have all the powers and discretions and be entitled to such indemnities that by this Deed or by law are conferred upon the Trustee.

5.2 The Trustee must perform and observe the covenants, trust conditions and obligations of this Deed as and to the extent they are included in the Deed or deemed to be included in the Deed by the Relevant Law.

5.3 A Trustee of the Fund shall be:-

- (a) two, three or four individuals; or
- (b) a constitutional corporation within the meaning of Section 10 of SIS.

5.4 A person must not be or act as a trustee or a director of a trustee company of the Fund if the person knows they are a disqualified person under SIS.

5.5 At all times while the Fund is neither a self-managed superannuation fund nor a public offer superannuation fund within the meaning of SIS the Trustee shall comprise persons qualified in that respect under SIS.

5.6 At all times while the Fund is operated and maintained as a Self-Managed Superannuation Fund, it must satisfy the definition of a self-managed superannuation fund in SIS.

- 5.7 Prior to being appointed as Trustee, the proposed Trustee must first have consented in writing to such appointment and in the case of a Trustee which is a constitutional corporation within the meaning of SIS, each of the Directors of the Trustee must first have consented in writing to such appointment.

## **6. APPOINTMENT OF NEW TRUSTEE**

- 6.1 The Trustee may with the consent of all Members appoint as Trustee a person eligible to be appointed Trustee in accordance with the Relevant Law.
- 6.2 Any vacancy occurring in the office of Trustee must be filled within 180 days of the day on which the vacancy occurs.
- 6.3 If a Trustee is unable or unwilling to appoint a Trustee to fill or avoid a vacancy the Members may appoint as Trustee a person eligible to be appointed Trustee in accordance with the Relevant Law.
- 6.4 The legal personal representative of:-
- (a) a deceased Member;
  - (b) a Member who has lost legal capacity; or
  - (c) a Member who has appointed that legal personal representative as their attorney under an enduring power of attorney,
- may exercise the Member's decision-making power on the appointment of a Trustee on behalf of the Member.
- 6.5 Where a Member is under the age of 18 years, a parent or guardian of the Member is permitted to exercise that Member's power to appoint a Trustee.
- 6.6 If the Fund has no remaining Members and no other person in this Clause 6 has the power to appoint a Trustee on behalf of the last person ceasing to be a Member, the legal personal representative of the last Member to have a legal personal representative shall have the power to appoint a Trustee.

## **7. CESSATION OF OFFICE OF TRUSTEE**

A Trustee shall immediately cease to be trustee of the Fund if:-

- 7.1 being a corporation, it is placed in receivership or in liquidation;
- 7.2 the Trustee is disqualified from holding office as Trustee by operation of the Relevant Law or is removed or suspended under the Relevant Law;
- 7.3 the Trustee resigns as a Trustee of the Fund by notice in writing to all Members;
- 7.4 being an individual, the Trustee dies or becomes mentally or legally incapacitated;
- 7.5 the Trustee tenders its written resignation to the Members, such resignation being incapable of taking effect until a substitute trustee is appointed in accordance with Clause 6 of this Deed; or
- 7.6 the Members unanimously resolve to replace the Trustee with a substitute Trustee.

## **8. CONTINUITY OF OFFICE**

Upon the vacation of office by any Trustee, such Trustee shall do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books held by such Trustee in relation to the Fund to the remaining or new Trustee.

## 9. INDEMNITY OF TRUSTEE

The Trustee and, where applicable, its directors, shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise of the trusts, powers, authorities and discretions vested in it or them and may use moneys forming part of the Fund in pursuance of this indemnity. This indemnity shall not apply to the Trustee or its directors:-

- 9.1 in respect of acts or omissions involving wilful misconduct, wilful neglect or wilful default;
- 9.2 where the Trustee or its directors:-
  - (a) fail to act honestly;
  - (b) intentionally or recklessly fail to exercise, in relation to any matter affecting the Fund, the requisite degree of care that the Trustee or a director is required to exercise; or
- 9.3 in respect of acts or omissions involving liability for a monetary penalty under a civil penalty order made under SIS.

## 10. MEETINGS OF TRUSTEES

### 10.1 Procedure Where Trustee is a Constitutional Corporation

Where the Trustee is a constitutional corporation within the meaning of SIS:-

- (a) the procedure for making a decision about a resolution shall be carried out; and
- (b) the method of recording a decision made by the Director or Directors of the Trustee shall be, in accordance with the Constitution of the corporation.

### 10.2 Procedure Where Trustee comprises Individuals

- (a) To arrive at decisions, all individual trustees may:-
  - (i) meet in person; or
  - (ii) hold a meeting using a telephone link so that all individual trustees can hear each other at all times; or
  - (iii) sign a Circulating Resolution;

provided each individual trustee has been given the opportunity to participate in the decision-making process.
- (b) Decisions shall be made by a simple majority voting in favour of the resolution, and where there is an equality of votes, the vote cast by each individual trustee shall then be multiplied by the combined balance of all accounts held by each individual trustee in his/her capacity as a Member of the Fund, except where the Relevant Law requires otherwise.
- (c) All decisions must be committed to writing.

## 11. POWERS OF THE TRUSTEE

### 11.1 General Powers

- (a) The Trustee must not act in a manner which is prohibited by the Relevant Law.
- (b) Subject to Clause 11.1(a) above, the Trustee may exercise its powers solely or jointly or in partnership with any other person, trustee, company or other entity (including the Trustee in its

own or separate capacity) and shall have the power to appoint a custodian and to hold beneficial interests in assets held by such custodian.

## 11.2 Discretions

- (a) Subject to Clause 16, the Trustee shall have in the exercise of each and every power exercisable by the Trustee an absolute and uncontrolled discretion and is not bound to give to any person any reason for or explanation of the exercise of any such power. The powers conferred on or exercisable by the Trustee under this Deed are additional to and not in substitution for the powers conferred on or exercisable by it at law.
- (b) Subject to Clause 11.1, the Trustee shall be entitled to fetter its discretion in regard to future events.

## 11.3 Power to Accept Contributions

The Trustee shall have the following powers:-

- (a) to accept contributions made by or on behalf of a Member in circumstances permitted by the Regulations.
- (b) to accept contributions in a form other than cash, including in-specie contributions, made by or on behalf of a Member.

No contribution shall be made to the Fund by or in respect of a Member if to do so would affect the status of the Fund as a Complying Superannuation Fund.

## 11.4 Delegation of Powers

Subject to the Relevant Law, the Trustee may delegate all or any of the powers vested in it to any person. The Trustee may appoint not more than two (2) persons jointly or severally to give receipts and discharges on behalf of the Fund and may at any time by notice in writing remove and replace any such person.

## 11.5 Appointment of Staff and/or Advisers

The Trustee may retain, and at its discretion, remove or suspend the services of professional advisors, managers or any person for permanent, temporary or special services as the Trustee considers necessary for the proper administration and management of the Fund, and to pay out of the Fund the salary or fees payable to such professional advisors, managers or other persons.

## 11.6 Expenses

Subject to the provisions of this Deed, and during such periods when the Fund is a Self Managed Superannuation Fund, the Trustee may pay out of the Fund all expenses of or incidental to the administration of the Fund but shall not be permitted to receive remuneration in any form in relation to services rendered by it or in the case of a Trustee which is a constitutional corporation within the meaning of SIS, by its Directors, in its capacity as Trustee of the Fund other than the reimbursement of out-of-pocket expenses.

## 11.7 Borrowing

- (a) To the extent permitted by SIS (including but not limited to Sections 67A and 67B), the Trustee may borrow or raise financial accommodation and assign, pledge, mortgage or charge any of the Trust as security for any such financial accommodation in circumstances prescribed by this Deed and the Fund's investment strategy.
- (b) The Trustee may borrow money to acquire assets (including but not limited to real property) provided that such borrowing is permitted by sections 67A or 67B of SIS.
- (c) For the purposes of Clause 11.7(b):-
  - (i) such assets shall include but not be limited to beneficiary interests in trusts; and

- (ii) to secure such borrowings, such assets may be encumbered by mortgage or charge.

### 11.8 Indemnities

To the extent permitted by SIS, the Trustee may give indemnities to or on behalf of any person the Trustee thinks fit.

## 12. TRUSTEE'S INVESTMENTS

### 12.1 Investment Strategy

The Trustee must devise, implement, review and amend as necessary a written investment strategy for the Fund in accordance with the Relevant Law and the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds.

### 12.2 Annual Review

The Trustee may review annually the performance (individually and as a whole) of the Fund's investments.

### 12.3 Trustee's Investment Powers

- (a) So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested in accordance with the investment strategies of the Fund (which shall include but not be limited to beneficiary interests in trusts) and the Trustee shall have all the powers and authorities necessary to enable it to make each such investment PROVIDED THAT the Trustee shall ensure that all investments shall be made in accordance with the Relevant Law.
- (b) Without limiting the scope of the foregoing Clause 12.3(a), the Trustee has the following specific investment powers:-
  - (i) to acquire, underwrite, sub-underwrite, dispose of, transfer, exchange, collect, realise, improve, exploit, extend, reconstruct, develop, insure, manage, give or take leases or licenses and otherwise deal with, apply and turn to account any real or personal property (wheresoever situated) and any interest whatsoever therein and any option or right whatsoever in respect thereof (whether or not producing income) in such manner, at such times, with or without security, fully paid or partly paid and subject to such conditions generally as the Trustee may think fit PROVIDED THAT the Trustee must not invest in loans to or give financial assistance to a Member or a relative of a Member unless the Fund was established before 16 December 1985 and, until 1 July 1994, the Trustee had express power under the governing rules of the Fund to lend money or give financial assistance to Members or their relatives;
  - (ii) to acquire shares or stocks (of any class), debentures, notes, bonds, mortgages, options, or other like security in any company wherever situated or incorporated, whether or not carrying on business and whether secured or unsecured, registered or unregistered, fully paid or partly paid;
  - (iii) to participate in and perform any obligations under or in respect of any synthetic or derivative investment or transaction, including without limitation an instalment warrant, futures contract, hedge contract, swap contract or option contract, whether or not related to any other property forming part of the Fund;
  - (iv) to acquire interests or rights in corporations not having a share capital wherever situated or incorporated;
  - (v) to acquire units or sub-units of any unit trust or interests in any other type of trust (of any class) whether listed or unlisted and whether fully paid or partly paid;

- (vi) to loan to any person or deposit with any person whatsoever or wherever situated with or without security and for any period whatsoever;
- (vii) to deposit with any bank or financial institution in any type of account for any period whatsoever;
- (viii) to draw, make, accept, endorse, discount, issue, transact or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
- (ix) to invest in any Annuity or policy whether by proposal, purchase or otherwise, and any choses in action, interests for life or lesser term or in reversion;
- (x) to acquire, participate or otherwise deal with any other investments permitted under the Relevant Law; and
- (xi) to apply borrowed funds to acquire real property in any part of the world.

### **13. POWER TO SELL, VARY AND OTHERWISE DEAL WITH INVESTMENTS**

The Trustee shall have power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

### **14. INTEREST OF TRUSTEE IN INVESTMENTS**

- 14.1 Subject to Clause 14.2, the Trustee shall have the power and is authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or a director of the Trustee being a corporation may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- 14.2 The Trustee and any director shall disclose details of any interest in an investment to which Clause 14.1 applies in the manner prescribed under the Corporations Act and the Relevant Law.

### **15. PROVISION OF INVESTMENT CHOICE**

- 15.1 The Trustee shall not be obliged to provide investment choice to Members or Beneficiaries of the Fund. The Trustee may however in its absolute discretion determine to provide investment choice subject to the Relevant Law either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund.
- 15.2 Where the Trustee determines that it is necessary or desirable so to do, it may create one or more sub-funds or investment pools in respect of one or more Members who have chosen individual investment strategies and may invest the assets held in each sub-fund or investment pool separately from or together with the assets of one or more other sub-funds or investment pools or assets of the Fund.
- 15.3 Upon admission of a person to Membership of the Fund or at any time whilst a person remains a Member or Beneficiary of the Fund, that person may, where the Trustee has determined to offer investment choice in accordance with Clause 15.1, select one or, where the Trustee has determined to permit Members to select multiple strategies, more than one of the investment strategies formulated by the Trustee under Clause 15.2 and direct the Trustee to invest part or the whole of the monies held in respect of that person under the Fund in accordance with the investment strategy or strategies selected by that person under this Clause PROVIDED THAT any such directions by the Member or Beneficiary shall only be given in the circumstances permitted by, and in accordance with, the Relevant Law and without limiting any of the foregoing the Trustee shall ensure that the Member or Beneficiary is provided with such information as shall be required by the Relevant Law in order to enable the Member or Beneficiary to make an informed decision.
- 15.4 A Member or Beneficiary who wishes to select one or more investment strategies pursuant to Clause 15.2 shall complete a request or any other documentation provided by the Trustee for this purpose which must clearly set out details of the investment strategy or strategies selected by the Member or

Beneficiary. The Trustee shall not be bound to act on the request or other documentation unless that request or other documentation is completed in accordance with any instructions issued by or on behalf of the Trustee and does not breach any of the requirements of the Relevant Law.

- 15.5 Except to the extent permitted by the Relevant Law, a Member or Beneficiary or any other person shall not direct the Trustee to make a particular investment in respect of a Member or Beneficiary of the Fund. Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustee shall be made for an additional investment strategy or strategies for those particular investments to be formulated by the Trustee and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with Clause 15.2. The Trustee may in its absolute discretion approve or reject any requests made under this Clause.
- 15.6 The Trustee shall advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustee in respect of those Members or Beneficiaries or classes of Members or Beneficiaries who decline, or otherwise are unable to select an investment strategy.

## 16. RESTRICTIONS ON INVESTMENTS

### 16.1 In-house Assets

The level of in-house assets within the meaning of Part 8 of SIS shall not exceed that set by the Relevant Law.

### 16.2 Arm's-Length Requirements

The Trustee must not invest any money of the Fund unless the Trustee and the other party to the transaction are dealing with each other at arm's-length, or if the Trustee has an interest in the transaction, the terms are no less favourable to the Trustee than those which would be reasonable to expect if the parties had been dealing on an arm's length basis.

### 16.3 Acquisition of Assets from Members

The Trustee shall not acquire an asset (other than cash or a Listed Security) from a Related Party except where permitted by the Relevant Law.

## 17. TRUSTEE'S POWERS OF MANAGEMENT

### 17.1 Execution of Documents

- (a) The Trustee being a corporation may by resolution of its board authorise any one or more of its officers, jointly or solely, to; or
- (b) Where there are two or more individuals as Trustees, then those individuals shall determine between them the manner in which the Trustee shall,

execute, sign or endorse cheques, negotiable instruments, agreements, writings, contracts or documents of any kind whatsoever required in or about the affairs of the Fund provided such method of execution is legally binding on the Trustee.

### 17.2 Bank Accounts

The Trustee may:-

- (a) open and maintain a banking account or accounts at any bank or other recognised financial institution as the Trustee may from time to time determine;
- (b) operate upon the account or accounts:-
- (i) by cheque and/or
- (ii) by electronic means,



in accordance with the authorities contained in Clause 17.1; and

- (c) permit cheques and other negotiable instruments for payment to the credit of the Fund bank account or accounts to be endorsed in accordance with the authorities contained in Clause 17.1.

### **17.3 Legal Proceedings**

The Trustee may institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or otherwise concerning the affairs of the Fund, and also to compound and to allow time for payment or satisfaction of any debts due and any claims or demands by or against the Fund.

### **17.4 Insurance**

The Trustee may insure or re-insure any risks contingencies or liabilities (including, but not limited to, any liability incurred as permitted by the Relevant Law) of the Fund the Trustee or directors of the Trustee being a corporation and to effect acquire and maintain policies of insurance upon the life disability or critical illness of or income protection for or any other insurance as may be permitted under the Relevant Law in regard to a Member (hereinafter called the "Insurance Cover") and to pay any premium on such insurance or re-insurance and to purchase or pay any Annuity for or to any Member or any Spouse or Dependant of any Member. The Trustee may in the name of the Fund arrange, effect, alter, amend and cancel such policy or policies for such amount and for such period and subject to such terms and conditions as the Trustee with the agreement of the relevant Member may determine.

### **17.5 Superannuation Surcharge**

The Trustee may:-

- (a) provide information relating to Members to a Regulator;
- (b) reduce benefits by the amount of penalty and interest within the meaning of the Tax Act;
- (c) keep records in accordance with Section 39(1) of the Superannuation Contributions Surcharge (Assessment and Collection ) Act 1997;
- (d) make provision for payment of such amount as the Trustee reasonably estimates may be required to pay any Taxation;
- (e) assume liability for the Superannuation Contributions Surcharge and the advance instalments on accepting moneys or assets paid or transferred to the Fund from any other Approved Fund.

### **17.6 Member Protection Standards**

The Trustee may allocate the administration costs of the Fund in a fair and equitable manner within the meaning of Division 5.5 of the Regulations.

### **17.7 General Powers**

The Trustee may generally do all acts and things as the Trustee may consider necessary or expedient for the due administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed.

### **17.8 Custodian Trustee**

- (a) To the extent permitted by the Relevant Law, the Trustee may appoint a nominee, custodian or other person to receive, hold and retain investments of the Fund on such terms and conditions and with such powers as determined by the Trustee from time to time.
- (b) The appointment referred to in Clause 17.8(a) must be in writing.

### **17.9 Fees and Expenses Relating to the Family Law Act**

The Trustee may impose fees in relation to any:—

- (a) application for information relating to a superannuation interest;
- (b) payment split or payment flag; or
- (c) other matter,

relating to part VIII B of the Family Law Act 1975 in such manner as is permitted by that Act. subject to the Relevant Law, this includes (but is not limited to) deducting fees from a benefit which is payable or which may become payable in respect of the relevant Member of the Non-Member Spouse following a payment split under Part VIII B of the Family Law Act 1975, at such times and in such manner as the Trustee determines.

## **18. INSURANCE BENEFITS**

### **18.1 Level of Benefits**

The amount and nature of Insurance Cover Benefits (hereinafter called the "Insured Benefits") shall be determined by the Trustee.

### **18.2 Commencement of Death and Disability Insurances**

A Member will not be insured for any Insured Benefits under any policy or policies of insurance arranged by the Trustee until:—

- (a) he or she is admitted as a Member; and
- (b) the Member has provided information required by the insurer.

### **18.3 Cessation of Insurance Cover**

A Member's interest in any Insured Benefits under any Insurance Cover arranged by the Trustee cease:—

- (a) if the Member ceases to be within the class of persons covered by the policy or policies of insurance or otherwise ceases to be covered under the terms of the policy or policies of insurance; or
- (b) upon the insurer terminating the policy or policies of insurance or the Member's cover; or
- (c) on written request to the Trustee given by the Member; or
- (d) on the Trustee determining that it is not reasonably practicable to obtain or renew a policy of life insurance on terms acceptable to the Trustee; or
- (e) if the amount standing to the credit of a Member's Accumulation account is insufficient to pay for the Member's cover; or
- (f) on payment of the Member's Insured Benefit or on transfer of the Insurance Cover to another Complying Superannuation Fund.

### **18.4 Scope of Insurance Cover**

Any Insured Benefit shall be subject to the terms of the Insurance Cover taken out by the Trustee to provide the relevant Insured Benefit and no payment shall be required to be made in respect of a Member in satisfaction of any Insured Benefit that is greater than the amount received by the Trustee

under the Insurance Cover in respect of that Member after deduction of all administration charges and expenses and taxes attributable to those amounts.

## **19. RECORDS, ACCOUNTS, AUDIT AND INSPECTION**

- 19.1 The Trustee shall keep or cause to be kept on behalf of the Fund proper books of both record and account showing all appropriate Membership details and all receipts, disbursements, assets and liabilities of and in connection with the Fund and shall at least once in every calendar year prepare statements showing the financial position of the Fund.
- 19.2 The books statements accounts and balance sheets of the Fund shall be audited by an approved Auditor in accordance with the provisions of the Relevant Law and the Auditor so appointed shall after each such examination submit a certificate in the prescribed form to the Trustee no later than the date the return is required to be lodged with the Regulator.
- 19.3 Copies of all documents relating to the Fund including this Deed and the Auditor's reports, annual balance sheets, Members' Accounts and Membership records shall be held by the Trustee and shall on the submission of a written request be made available by the Trustee at least once in each year for inspection by a Member or a Participating Employer who may request the inspection.
- 19.4 The Trustee shall obtain such actuarial reports on the Fund or benefits payable as are required by the Relevant Law.
- 19.5 The Trustee must comply with all reasonable requests concerning production of and inspection of any books or records of the Fund by the Regulator.

## **20. PAYMENT OF TAXES**

The Trustee shall be empowered to deduct such amounts of Taxation as may be required by the Relevant Law to be deducted from any lump sum payment or other benefit to be paid out of the Fund and to meet any Taxation liability which may arise from time to time and to debit any Member's Accumulation Account or any Reserve Account with the payment of the amount or proportionate amount of the Taxation to be paid and notwithstanding that any Member's credit in an account may have become vested within the meaning of SIS.

## **21. ALTERATION OF THE DEED**

- 21.1 The provisions of this Deed may be amended, added to or varied from time to time by the Trustee and the Members provided the proposed amendment, addition or variation is in accordance with the provisions of the Relevant Law.
- 21.2 Any such amendment, addition or variation must be effected by a Deed executed by the Trustee and the Members with effect from a date (being a previous or future date) specified by the Trustee or if none is specified from the date the amendment is actually effected.
- 21.3 No amendment may alter adversely a Member's right or claim to accrued benefits or the amount of those accrued benefits unless:-
- (a) where required, the consent of the affected Member and/or the Regulator is obtained in accordance with the Relevant Law;
  - (b) the alteration is necessary to comply with or is of a kind expressly permitted by the Relevant Law; or
  - (c) the alteration is of a kind permitted by the Regulations.
- 21.4 The Trustee shall give to each Member such information or notice in respect of the amendment(s) as may be required by the Relevant Law.

## **22. MEMBERSHIP OF THE FUND**

- 22.1 The Trustee may invite any Eligible Person to participate in the Fund.

- 22.2 Each Eligible Person invited to participate in the Fund shall apply in writing to the Trustee for admission to Membership of the Fund in a form prescribed by the Trustee.
- 22.3 The Trustee may accept or refuse any application for Membership in its absolute discretion and shall not be required to give any reason for any such refusal.
- 22.4 Subject to Clause 22.6, a person shall become a Member when the Trustee approves such application and Membership may be granted with effect from a date (being a previous or future date) specified by the Trustee or if none is specified from the date the application is actually approved. Before any contributions in respect of the newly approved Member are made, the Trustee shall provide a written statement advising of its acceptance of the Member's application.
- 22.5 Each Member by his application shall be deemed to have assented to and to have consented to be bound by the provisions of this Deed.
- 22.6 Upon being accepted as a Member of the Fund, the new Member shall be required to consent to:-
- (a) being appointed as a Trustee of the Fund where the Trustee is comprised of individuals; or
  - (b) being appointed as a Director of the Trustee of the Fund where the Trustee is a constitutional corporation.
- 22.7 A Member shall cease to be a Member in the event of the first of the following:-
- (a) the Trustee determines that the Member has been paid all of his or her Benefits from the Fund;
  - (b) where the Member dies, the Trustee determines that the deceased Member's Benefits have been paid to the deceased Member's Dependants or legal personal representative;
  - (c) the Trustee determines that the Member's continued Membership would cause the Fund to cease complying with the Relevant Law; or
  - (d) the Trustee determines on reasonable grounds that the Member should cease to be a Member.

## **23. CONTRIBUTIONS**

### **23.1 Persons permitted to make Contributions**

With the consent of the Trustee and subject to any provision of this Deed to the contrary, any person including:-

- (a) a Member;
- (b) an Employer;
- (c) any State, Territory or Federal government (including under the Federal government's co-contribution scheme); or
- (d) any other person permitted to make Contributions in respect of a Member under the Relevant Law,

may make Contributions to the Fund from time to time in respect of the Member.

### **23.2 Acceptance of Contributions**

The Trustee may, in its discretion, accept Contributions made by or in respect of a Member in circumstances permitted by the Relevant Law.

### 23.3 Refusal of Excess Contributions

The Trustee may, but is not required to, refuse to accept some or all Contributions that it reasonably believes would cause the Member to exceed his or her Concessional Contributions Cap or Non-Concessional Contributions Cap.

### 23.4 Allocation of Contributions

If the Trustee receives a contribution in a month, the Trustee must allocate the contribution to the relevant Member:-

- (a) within twenty-eight (28) days after the end of the month; or
- (b) if it is not reasonably practicable to allocate the contribution to the relevant Member within twenty-eight (28) days after the end of the month – within such longer period as is reasonable in the circumstances.

### 23.5 Spouse Contributions Splitting

- (a) This Clause 23.5 does not apply to so much of a Member's Benefit in the Fund that is subject to a payment split or on which a payment flag is operating under Part VIII B of the *Family Law Act 1975*.
- (b) A Member may, in a financial year, apply to the Trustee to rollover, transfer or allot an amount of his or her Benefits for the benefit of the Member's Spouse that is equal to the amount of Splittable Contributions made to the Fund by, for or on behalf of the Member in either:-
  - (i) the last financial year that ended before the relevant application; or
  - (ii) the financial year the relevant application is made in where the Member's entire Benefits are to be rolled over, transferred or cashed in that year.
- (c) An application made under this Clause 23.5 is invalid:-
  - (i) if in the financial year it is made:-
    - (A) the Member has already made an application in respect of the relevant financial year; and
    - (B) the Trustee is either considering the application or has given effect to that application; or
  - (ii) if the amount of the Benefits to which the application relates exceeds the Maximum Splittable Amount; or
  - (iii) subject to Clause 23.5(d), if at the time of the application:-
    - (A) the Member's Spouse is aged between Preservation Age and 65 years; and
    - (B) the Member's Spouse satisfies the condition of release specified in item 101 of Schedule 1 of the Regulations.
- (d) Despite Clause 23.5(c)(iii), an application is not invalid under that Clause if it includes a statement by the Member's Spouse to the effect that, at the time of the application, the Spouse:-
  - (i) is aged between Preservation Age and 65 years; and
  - (ii) does not satisfy the condition of release specified in item 101 of Schedule 1 of the Regulations.

- (e) The Member must specify in the application the amount of the Benefit the Member wishes to split for the benefit of the Member's Spouse, from the following:—
- (i) the Member's Taxed Splittable Contributions;
  - (ii) the Member's Untaxed Splittable Contributions;
  - (iii) the Member's Untaxed Splittable Employer Contributions.
- (f) The Trustee may in its sole discretion accept an application made under Clause 23.5(b) if:—
- (i) the application complies with Clauses 23.5(b) to (e); and
  - (ii) the Trustee has no reason to believe that the statement referred to in Clause 23.5(d) is untrue; and
  - (iii) the amount to which the application relates does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- (g) Where the Trustee accepts an application under this Clause 23.5, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application roll over, transfer to an Approved Fund, or allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Member's Spouse.
- (h) Before the Trustee allots any amount under Clause 23.5(g) for the benefit of the Spouse:—
- (i) where the Fund is a Self Managed Superannuation Fund, the Trustee must ensure that the definition of Self Managed Superannuation Fund is satisfied by appointing him or her as a director of the Trustee company or as an individual Trustee; and
  - (ii) either, the Spouse must:—
    - (A) be a Member; or
    - (B) apply to become and be accepted as a Member.
  - (i) If a Member requests a split of his or her Untaxed Splittable Contributions, Taxed Splittable Contributions or his or her Untaxed Splittable Employer Contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the amount permitted by the Regulations.

### 23.6 Return of Contributions

- (a) If Contributions are:
- (i) accepted by the Trustee in breach of the Relevant Law or this Deed;
  - (ii) accepted by or made to the Trustee by mistake; or
  - (iii) required to be returned to the contributor or another party by the Regulator or by order of a court or tribunal,

the Trustee must return such amount of the Contributions referred to above as determined by the Trustee or as required by the Regulator or order of a court or tribunal provided that the return of the Contributions and the amount of the Contributions determined by the Trustee to be returned are permitted by the Relevant Law.

- (b) For the avoidance of doubt, the Trustee is authorised to take into account any of the matters outlined in the Relevant Law, including Regulation 7.04(4)(b) of the Regulations where applicable, in determining the amount of the Contributions to be returned.

## 24. ACCOUNTS

### 24.1 Accumulation Accounts

An account shall be established and maintained for each Member or Beneficiary of the Fund (herein called the **Accumulation Account**).

#### (a) Credits to Accumulation Accounts

The following amounts may be credited to the appropriate Accumulation Account:—

- (i) the transfer of credit amounts held in the name of a Member previously held in an Approved Fund;
- (ii) a Directed Termination Payment made on the Member's behalf;
- (iii) any Contributions made pursuant to this Deed;
- (iv) the proceeds of any claim made on an insurance policy;
- (v) transfers from the Operating Account;
- (vi) transfers from any Reserve Account;
- (vii) transfers from a Member's Pension Account;
- (viii) transfers, rollovers or allotments from an account held by a Member's Spouse in the Fund or any other Complying Superannuation Fund as permitted under the Relevant Law dealing with spouse contributions-splitting;
- (ix) such other amounts as the Trustee shall determine from time to time and which shall not result in the Fund ceasing to be a Complying Superannuation Fund.

#### (b) Debits to Accumulation Accounts

The following amounts may be debited to the appropriate Accumulation Account:—

- (i) transfers to an Approved Fund made at the written request of a Member;
- (ii) transfers to the Operating Account;
- (iii) transfers to any Reserve Account;
- (iv) transfers to a Member's Pension Account;
- (v) transfers, rollovers or allotments to an account held by a Member's Spouse in the Fund or any other Complying Superannuation Fund as permitted under the Relevant Law dealing with spouse contributions-splitting;
- (vi) any costs or expenses incurred by the Trustee which are specific to a Member including but not limited to insurance premiums, any other costs related to the purchase or continuance of any insurance policy for the benefit of the Member or his Dependants;
- (vii) payment of a Benefit (other than payment from a Pension Account) to a Member or the Dependants or Beneficiaries of that Member;
- (viii) purchase of an Annuity in relation to a Member or Beneficiary;
- (ix) any Taxation, costs, charges and expenses and provisions in respect of any of them as the Trustee may determine;
- (x) such other amounts as the Trustee shall determine from time to time.

#### (c) Preservation and Cashing Restrictions

In keeping records for the Funds and its Members, the Trustee shall be required to maintain records to show in relation to a Members' Accumulation Account:—

- (i) the amount that is required to be preserved;

- (ii) the amount that is a restricted non-preserved benefit; and
- (iii) the amount is an unrestricted non-preserved benefit.

## 24.2 Operating Account

An account shall be established and maintained through which all operating transactions for the Fund shall be conducted (herein called the **Operating Account**).

### (a) Credits to the Operating Account

The following amounts may be credited to the Operating Account:–

- (i) all income and profits derived from investments of the Fund as they arise (specifically excluding Benefits that have been rolled over or transferred into the Fund);
- (ii) any unrealised gain arising from a revaluation of the assets of the Fund;
- (iii) any adjustments necessarily or desirably made to a Member's Accumulation Account or a Member's Pension Account;
- (iv) any amount transferred from a Reserve Account;
- (v) the proceeds of any insurance policy which necessarily or desirably should not be transferred to a Member's Accumulation Account;
- (vi) such other amounts as the Trustee shall determine from time to time.

### (b) Debits to the Operating Account

Subject to Clause 24.2(c), the following amounts may be debited to the Operating Account:–

- (i) any loss realised on the sale or disposal of any asset of the Fund;
- (ii) any Taxation, costs, charges and expenses which have not been debited to a Member's Accumulation Account;
- (iii) any unrealised loss arising from a revaluation of the assets of the Fund;
- (iv) any costs or expenses incurred by the Trustee related to the purchase or continuance of any insurance policy for the benefit of any Member or a Dependant or Dependents of any Member which have not been debited to a Member's Accumulation Account;
- (v) any amount transferred to a Reserve Account;
- (vi) such other amounts as the Trustee shall determine from time to time,

and, at the end of each financial year (or on an interim basis, if required), after having made all relevant credits and debits to the Operating Account, the Trustee, having regard to any requirement to create any provisions or reserves, shall determine the earnings rate (whether positive or negative) for the Fund and shall then transfer to (or from) the Accumulation Account and Pension Accounts (if any) of each Member, and such other Accounts as the Trustee determines, the earnings (or negative earnings) based upon the credit balance of each Member's Accumulation Account and Pension Accounts (if any) as a proportion of the total assets held by the Fund, or on such other basis as the Trustee determines to be fair and reasonable.

### (c) Multiple Operating Accounts

If the Trustee has provided to one or more Members or Beneficiaries investment choice in accordance with Clause 15, the Trustee shall create a separate Member's Operating Account or Beneficiary's Operating Account for each such Member or Beneficiary to facilitate the calculation of earning rate for the investment strategy or strategies chosen by such Members or Beneficiaries. The Trustee shall determine in its absolute discretion the amounts and type of debits which are to be borne by each separate Member's Operating Account or Beneficiary's Operating Account.



### 24.3 Operating Reserve Account

- (a) The Trustee may in its absolute discretion establish one or more Operating Reserve Accounts at any time and transfer to an Operating Reserve Account amounts derived from:-
- (i) a Member's Accumulation Account; or
  - (ii) a Member's Pension Account; or
  - (iii) an Operating Account; or
  - (iv) another Operating Reserve Account; or
  - (v) a Pension Reserve Account,

provided such transfers are permitted by the Relevant Law and provided that the resulting balance of a Member's Accumulation Account or a Member's Pension Account does not fall below the minimum balance required to be maintained by the Relevant Law.

- (b) The Trustee may transfer an amount from an Operating Reserve Account and credit that amount to:-
- (i) a Member's Accumulation Account; or
  - (ii) a Member's Pension Account; or
  - (iii) an Operating Account; or
  - (iv) another Operating Reserve Account; or
  - (v) a Pension Reserve Account,

provided such transfers are permitted by the Relevant Law.

- (c) Funds standing to the credit of an Operating Reserve Account shall not be deemed to form part of any other Account.
- (d) Income earned on the funds held in an Operating Reserve Account shall be credited to that Operating Reserve Account.

### 24.4 Pension Reserve Account

- (a) The Trustee may in its absolute discretion establish one or more Pension Reserve Accounts at any time and transfer to a Pension Reserve Account amounts derived from:-
- (i) a Member's Accumulation Account; or
  - (ii) a Member's Pension Account; or
  - (iii) an Operating Account; or
  - (iv) an Operating Reserve Account; or
  - (v) another Pension Reserve Account,

provided such transfers are permitted by the Relevant Law and provided that the resulting balance of a Member's Accumulation Account or a Member's Pension Account does not fall below the minimum balance required to be maintained by the Relevant Law.

- (b) The Trustee may transfer an amount from a Pension Reserve Account and credit that amount to:-

- (i) a Member's Accumulation Account; or
- (ii) a Member's Pension Account; or
- (iii) an Operating Account; or
- (iv) an Operating Reserve Account; or
- (v) another Pension Reserve Account,

provided such transfers are permitted by the Relevant Law.

- (c) Funds standing to the credit of a Pension Reserve Account shall not be deemed to form part of any other Account.
- (d) Income earned on the funds held in a Pension Reserve Account shall be credited to that Pension Reserve Account.

## **25. BENEFITS RELATING TO PAYMENT SPLITS AND FLAGGING**

### **25.1 Payment Splits**

If the Trustee receives a splitting agreement or Court Order under Part VIII B of the Family Law Act 1975, then so long as it has been properly served and subject to the Relevant Law, the Trustee may:–

- (a) adjust, vary or reduce any benefit payable or which may become payable from the Fund in respect of the relevant Member on such bases (including by commutation of any pension having regard to the advice of the Actuary) and at such times as the Trustee determines from time to time, to the extent permitted by the Relevant Law; and
- (b) make a payment to the Non-Member Spouse or a transfer in respect of the Non-Member Spouse in accordance with Clause 28.5.

### **25.2 Rules for Payment Splits**

The Trustee may make rules dealing with:–

- (a) the valuation of the interest of the Non-Member Spouse (including any adjustments); and
- (b) the timing of the calculation of the value of the interest of the Non-Member Spouse; and
- (c) other matters relating to the payment split and the Non-Member Spouse's interest in the Fund,

as it determines from time to time subject to the Relevant Law.

### **25.3 Deferred Payment Splits**

If the Trustee is required by the Relevant Law or considers that it is appropriate to defer giving effect to a payment split, then so long as the splitting agreement or Court Order under Part VIII B of the Family Law Act 1975 has been served properly, the Trustee shall:–

- (a) record the existence of the notice of payment split; and
- (b) keep a record of the Non-Member Spouse's interest in the Fund on such bases (including a notional basis) and in such manner as the Trustee determines from time to time subject to the Relevant Law.

### **25.4 Flagging Agreements**

If the Trustee receives a flagging agreement or Court Order Under Part VIII B of the Family Law Act 1975 that has been properly served, the Trustee shall:–

- (a) record the existence of the agreement or Court Order; and
- (b) defer payment of the benefit to or in respect of the Member until the agreement or Court Order is lifted.

## 26. STATEMENTS TO MEMBERS

26.1 To the extent required by the Relevant Law, the Trustee must give to each Member who is not a Pensioner a written statement each year setting out:-

- (a) the amount of any Benefit accrued in the Member's Accumulation Account at the commencement of the first day of the year of income to which the statement relates;
- (b) the amount of any Benefit accrued in the Member's Accumulation Account at the expiration of the last day of that year of income;
- (c) the method of determining the amount of the Benefit referred to in Clause 26.1(b);
- (d) the amount of contributions made in respect of the Member by the Member, any Participating Employer, or any other person during that year of income; and
- (e) any other information required by the Relevant Law.

26.2 Where a person ceases to be a Member on a day other than the last day of a year of income of the Fund, the Trustee shall give, or arrange to be given, to the Member as soon as practicable thereafter a written statement setting out:-

- (a) the amount of any Benefit entitlement of the Member, identifying any amounts that are required by the Relevant Law or by this Deed to be preserved in relation to the Member;
- (b) the method of determining that entitlement;
- (c) if the person ceases to be a Member otherwise than as a result of his death or retirement from the workforce - the amounts and other particulars referred to in Clause 26.2(a) as though a reference in that Clause to the year of income to which the statement relates were a reference to the period commencing on the first day of the year of income during which the person ceased to be such a Member and ending at the expiration of the day on which the person ceased to be such a Member;
- (d) details of all transfers to and from the Member's Accumulation Account since any previous notification; and
- (e) any other information required by the Relevant Law.

## 27. BENEFITS

### 27.1 Election of Type of Benefit

When a Beneficiary becomes entitled and wishes, or is otherwise required, to receive a Benefit from the Fund, the Beneficiary shall provide to the Trustee a written instruction to advise how the Beneficiary wishes to receive the Benefit (**Benefit Election Form**). The Benefit Election Form is to be in a form substantially similar to Appendix 1 and is to advise the proportions or amounts of the Benefit which is to be received in the form of one or more of the following options:-

- (a) cash paid in the form of one or more lump sums;
- (b) one or more Pensions;
- (c) the purchase of one or more Annuities from an Annuity Provider;

- (d) the transfer of one or more assets from the Fund to the Beneficiary; or
- (e) any other method permitted by the Relevant Law.

### **27.2 Paying Benefits**

Subject to the Relevant Law and having regard to the Benefit Election Form but without being bound by it, the Trustee may provide a Benefit payable to a Beneficiary in one or more of the following forms:-

- (a) cash paid in the form of one or more lump sums;
- (b) one or more Pensions;
- (c) the purchase of one or more Annuities from an Annuity Provider;
- (d) the transfer of one or more assets from the Fund to the Beneficiary; or
- (e) any other method permitted by the Relevant Law.

### **27.3 Forfeiture**

- (a) To the extent permitted by the Relevant Law, a Member or Beneficiary forfeits the whole of his or her right title or interest in and to any Benefit which may (but which has not already) become payable under this Deed if the Relevant Law permits and the Member or Beneficiary has purported to assign, alienate, charge or transfer all or part of it or if any other event occurs which results in another person becoming entitled to it.
- (b) Clause 27.3(a) has no effect to the extent that its operation would be contrary to the Bankruptcy Act 1966.
- (c) The Trustee may (but need not) apply all or part of a forfeited Benefit for the benefit of one or more of the Members (other than the Member whose Benefit is subject to the operation of Clause 27.3) or a Beneficiary and his or her Dependants as the Trustee considers appropriate and the Relevant Law permits.
- (d) If the Trustee determines that an event of forfeiture no longer applies to a Member or Beneficiary, the Trustee may pay all or part of the forfeited Benefit (less any amount applied under Clause 27.3(c)) to or in respect of the Member or Beneficiary as the Trustee considers appropriate and the Relevant Law permits.

### **27.4 Release of Benefits to pay excess contributions tax**

- (a) Where the Trustee receives a Release Authority from or in respect of a Member, the Trustee must pay to the Member or the Commissioner of Taxation, as the case requires, within the time and in the manner prescribed by the Relevant Law the least of the following amounts:-
  - (i) if the Member or the Commissioner of Taxation requests the Trustee, in writing, to pay a specific amount in relation to the Release Authority – that amount;
  - (ii) the amount of Excess Concessional Contributions Tax or Excess Non-Concessional Contributions Tax stated in the Release Authority;
  - (iii) the sum of all of the Member's Benefits in the Fund.
- (b) The amount paid by the Trustee in accordance with this Clause 27.4 must be paid from the relevant Member's Benefits.

## **28. BENEFITS PAYABLE PRIOR TO ATTAINING AGE 65 ON RETIREMENT OR AT OTHER TIMES**

### **28.1 Early Retirement Benefit Entitlement**

In the event of the Early Retirement (within the meaning of the Regulations) of a Member and not being entitled to a Benefit under any other provision of this Deed, a Benefit (hereinafter called an **Early Retirement Benefit**) shall be payable by the Trustee out of the Fund to that Member.

### **28.2 Quantum of Early Retirement Benefit**

The Early Retirement Benefit that a Member is entitled to withdraw pursuant to Clause 28.1 shall comprise the amount standing to the credit of the Member's Accumulation Account at the time of becoming entitled to the Benefit pursuant to Clause 28.1.

### **28.3 Severe Financial Hardship**

The Trustee may pay a Benefit to a Member in the event that the Member is taken by the Trustee acting in accordance with the Regulations to be in severe financial hardship and the Trustee in determining the amount and form of the Benefit shall comply with the Relevant Law.

### **28.4 Compassionate Grounds**

If the Regulator makes a determination in respect of a Member that an amount of his or her Benefit may be released on a compassionate ground, the Trustee shall pay a Benefit equal to an amount determined by the Regulator.

### **28.5 Transfers of Non-Member Spouse Interests**

If the Trustee receives a splitting agreement or Court order under Part VIII B of the Family Law Act 1975, then:-

- (a) subject to the Relevant Law and on the written request of a Non-Member Spouse or otherwise, the Trustee must pay to the Non-Member Spouse; or
- (b) subject to the Relevant Law and on the written request of a Non-Member Spouse or Member or otherwise, the Trustee must transfer to another fund (including an Eligible Rollover Fund) in respect of the Non-Member Spouse,

any amount which becomes payable in respect of the Non-Member Spouse following a payment split under Part VIII B of the Family Law Act 1975, and the receipt of the Non-Member Spouse or the trustee of such other fund shall be a sufficient discharge of the Trustee of its liability in respect of that Non-Member Spouse.

### **28.6 Termination of Employment**

- (a) The Trustee may pay a Benefit to a Member in the event of the termination of the Member's Gainful Employment with an Employer who had, or any of whose associates had, at any time contributed to the Fund in relation to the Member.
- (b) The Member is entitled to the amount standing to the credit of the Member's Accumulation Account at the time of termination of the Member's employment mentioned in Clause 28.6(a) above.

### **28.7 Permanent departure from Australia**

- (a) The Trustee must pay a Benefit to a Member if the Member is a temporary resident permanently departing Australia and satisfies the requirements in Regulation 6.20A of the Regulations.
- (b) The Member is entitled to the amount standing to the credit of the Member's Accumulation Account at the time of satisfying the condition of release so long as the amount paid does not exceed any limitation in the Relevant Law.

- (c) The Benefit will be payable in such form as required by the Relevant Law.

## 28.8 Other Benefits

In respect of any Benefit not otherwise specifically dealt with in this Deed:-

- (a) a Benefit is payable in the event of a condition of release, outlined in the Regulations, being satisfied by or in respect of the Member;
- (b) the Member is entitled to the amount standing to the credit of the Member's Accumulation Account at the time of satisfying the condition of release, unless a cashing restriction applies in respect of that condition of release in which case the Benefit will be payable in accordance with the relevant cashing restriction.

## 29. BENEFIT ON DEATH OF A MEMBER

### 29.1 Binding Death Benefit Nominations

- (a) Subject to the remaining provisions of this Clause 29.1, a Member may direct the Trustee in a written notice (**Binding Death Benefit Nomination**) to pay, on or after the Member's death, the Member's Death Benefit which includes:-
- (i) the amount standing to the credit of the Member in the Member's Accumulation Account; and
- (ii) the proceeds, if any, of any policy or policies of insurance effected on the life of the Member by the Trustee on behalf of the Fund and paid to the Fund; and,
- (iii) provided it comprises a lump sum benefit to a Spouse, former Spouse or Child of the deceased Member, the amount calculated under Subdivision 295-C of the Tax Act,
- to one or more of the Member's Dependants and/or legal personal representative as nominated by the Member, in the proportions or amounts, and in the form (whether as a lump sum or Pension) indicated by the Member in a Binding Death Benefit Nomination.
- (b) Subject to Clause 29.1(c), a Binding Death Benefit Nomination must be in a form approved by the Trustee from time to time and may take the form of that contained in Appendix 2.
- (c) A Binding Death Benefit Nomination must not require the Trustee to pay a Member's Death Benefit in breach of the Relevant Law, and is ineffective to the extent it so requires.
- (d) In order for the Binding Death Benefit Nomination to be legally binding on the Trustee, the Member must:-
- (i) arrange for two (2) adult persons, neither of whom have been nominated as a Beneficiary, to witness the Member's signature on the Binding Death Benefit Nomination; and
- (ii) only nominate persons who are eligible under the Relevant Law to be a nominated Beneficiary.
- (e) In the event of the death of a Member who at the time of death was not in receipt of a Pension under this Deed, the Trustee must pay the Death Benefit to the person or persons nominated by the Member in accordance with the Binding Death Benefit Nomination provided by the Member to the Trustee (if any) to the extent that the nomination is effective.
- (f) If the Trustee has not received a Binding Death Benefit Nomination in respect of a Member, or to the extent that a Binding Death Benefit Nomination received in respect of the Member is ineffective, the Trustee shall pay the Death Benefit (or that part not effectively disposed of by the Binding Death Benefit Nomination) to:-

- (i) the Dependants and the legal personal representative(s) of the Member or such one or more of them to the exclusion of the other or others and in such manner and proportions as the Trustee shall determine and is permitted by the Relevant Law; or
- (ii) any individual or individuals as permitted by the Relevant Law.

## 29.2 Payment of Benefit

- (a) Where a Death Benefit is payable:-
  - (i) under Clause 29.1(e); or
  - (ii) in accordance with a Binding Death Benefit Nomination that does not specify the form in which to pay the Death Benefit,

the Trustee shall pay the Death Benefit in one or more of the forms referred to in Clause 27.2.
- (b) Where the Trustee is paying a Death Benefit to a Beneficiary in the form of a Pension or an Annuity, the Trustee must cash the Benefit as a lump sum to the Beneficiary when and to the extent required by the Relevant Law.

## 30. DISABILITY

### 30.1 Total and Permanent Disablement Benefit Entitlement

A Member shall not be treated as Totally and Permanently Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally and Permanently Disabled.

#### (a) Quantum of Benefit

A Member who is entitled to a Total and Permanent Disablement Benefit shall be entitled to the following:-

- (i) the balance of the Member's Accumulation Account; and
- (ii) the proceeds, if any, of any policy or policies of insurance effected to cover the Total and Permanent Disablement of the Member by the Trustee on behalf of the Fund and paid to the Fund.

#### (b) Payment of Total and Permanent Disablement Benefit

The Benefit in respect of a Member who is entitled to a Total and Permanent Disablement Benefit shall be applied in one or more of the forms determined by the Trustee pursuant to Clause 27.2.

### 30.2 Total but Temporary Disablement Benefit Entitlement

A Member shall not be treated as Totally but Temporarily Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally but Temporarily Disabled.

#### (a) Quantum of Benefit

The Benefit in respect of a Member who is entitled to a Total but Temporary Disablement Benefit shall be comprised of:-

- (i) the proceeds, if any, of any policy or policies of insurance effected to cover the total but temporary disability of the Member by the Trustee on behalf of the Fund and paid to the Fund; and
- (ii) such other amounts drawn from the credit balance of the Member's Accumulation Account provided that the amount so drawn does not exceed any limitations in relation to:-

- (A) income receivable by the Member under these circumstances; or
- (B) the resulting balance of the Member's Accumulation Account,  
imposed by the Relevant Law.

**(b) Payment of Total but Temporary Disablement Benefit**

The Benefit in respect of a Member who is entitled to a Total but Temporary Disablement Benefit shall be applied in such form as permitted by the Relevant Law.

**(c) Temporary Cessation of Contributions**

The payment of Contributions to the Fund by a Member or Employer (if any) may be suspended during such periods as the Member is deemed to be Totally but Temporarily Disabled.

**(d) Effect on Membership**

The periods during which a Member is deemed to be Totally but Temporarily Disabled:-

- (i) shall be deemed to be periods when the Member continues to be a Member of the Fund; and
- (ii) shall be included in determining the Member's period of Membership of the Fund; and
- (iii) shall be included in determining any qualifying or eligibility period which may be required before a Member qualifies or becomes eligible to take out certain insurance policies.

**(e) Cessation of Total but Temporary Disablement**

A Member shall not be treated as Totally but Temporarily Disabled upon the occurrence of one of the following events:-

- (i) the Member no longer meets the definition of Totally but Temporarily Disabled; or
- (ii) the Member has reached the Retiring Age; or
- (iii) the Member becomes entitled to receive another type of Benefit pursuant to the provisions of this Deed.

## **31. TRANSITION TO RETIREMENT**

When a Member attains the relevant Preservation Age, the Member is eligible to receive, and the Trustee may pay to the Member, one or more Non-Commutable Income Streams subject to the restrictions set out in the Relevant Law or as otherwise permitted by the Relevant Law.

## **32. BENEFITS ON ATTAINING AGE 65**

### **32.1 Benefit Entitlement**

The Member on attaining the age of 65 years is entitled to receive a Benefit (hereinafter called a Retirement Benefit).

### **32.2 Quantum of Benefit**

The Benefit to which a Member is entitled under Clause 32.1 shall comprise the amount standing to the credit of the Member's Accumulation Account at the time of paying the relevant Benefit.

### **32.3 Payment of Benefits**

Each Benefit shall be paid in one or more of the forms determined by the Trustee pursuant to Clause 27.2.



### 33. ANNUITIES

- 33.1 If a Member or Beneficiary has advised the Trustee that all or part of a Benefit to which they are entitled is required to be paid as an Annuity, and such payment is not in breach of the Relevant Law, the Trustee shall arrange to purchase an Annuity from an Annuity Provider for the benefit of the Member or Beneficiary.
- 33.2 The amount required to purchase the Annuity shall be derived from the Member's Accumulation Account and shall not exceed the balance standing to the credit of that account provided that the Trustee has made all necessary adjustments to the balance of that account having regard to the transfer of any entitlement which the Member or Beneficiary may have to funds forming part of any other account.

### 34. PENSION BENEFITS - GENERAL PROVISIONS

#### 34.1 Establishment of Pension Account

Where a Member or Beneficiary has become entitled to receive a Benefit and has elected to receive that Benefit in part or in full in the form of one or more types of Pension, the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which accounts the Trustee shall transfer amounts determined in accordance with this Deed.

#### 34.2 Operation of Pension Account

- (a) The following amounts shall be credited to the Pension Account of a Pensioner:—
- (i) any amount transferred under Clause 34.1;
  - (ii) any moneys or assets paid or transferred to the Fund from any other Approved Fund which the Trustee considers it appropriate to credit;
  - (iii) the proceeds of any policy or policies of insurance effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
  - (iv) transfers from the Operating Account;
  - (v) any other payments or components referred to in item 202.2 of Schedule 2 to the Regulations;
  - (vi) any amount of financial assistance determined by the Trustee to be appropriate to credit;
  - (vii) such other amounts as the Trustee shall from time to time determine.
- (b) The following amounts are to be debited to the Pension Account of a Pensioner:—
- (i) any moneys or assets paid or transferred from the Fund to any other Approved Fund which the Trustee considers it appropriate to debit;
  - (ii) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
  - (iii) the costs of any policy or policies of insurance effected by the Trustee in respect of the Pensioner which are not debited to a Member's Accumulation Account;
  - (iv) such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of transfer of any other moneys or assets to the Fund from any other Approved Fund as the Trustee shall determine;

- (v) such of the costs, charges and expenses of the Fund or of the Pension as the Trustee shall determine;
- (vi) such proportion of the amount paid in respect of a Trustee indemnity as the Trustee shall determine;
- (vii) a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee shall determine;
- (viii) transfers to the Operating Account;
- (ix) any amount transferred to a Member's Accumulation Account;
- (x) any amount of levy determined by the Trustee to be appropriate to debit;
- (xi) such other amounts as the Trustee shall from time to time determine.

### 34.3 Method of Payment of Pension

In relation to a Pension payable to a Pensioner or a Reversionary Beneficiary, the Trustee may transfer an asset of the Fund to the Pensioner or Reversionary Beneficiary in payment of some or all of the Pension provided that:-

- (a) a Pensioner or Reversionary Beneficiary requests such transfer, or consents to same, in writing;
- (b) the Relevant Law does not prohibit the proposed transfer; and
- (c) the value attributed to the asset transferred is equivalent to the current market value of the asset.

### 34.4 Segregation of Pension Assets

In relation to Pensions payable to Members and Beneficiaries, the Trustee may:-

- (a) segregate or set apart the assets which represent the Pension Accounts of the Members or Beneficiaries for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
- (b) constitute the segregated assets as segregated current and non-current pension assets (as those terms are defined in the Tax Act), and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Law shall require.

### 34.5 Benefit on Death of Pensioner

- (a) A Pensioner may direct the Trustee in a written notice (**Binding Death Benefit Nomination**) to pay, on or after the Pensioner's death, the Pensioner's Benefits (**Death Benefit**) which includes:-
  - (i) the amount standing to the credit of the Pensioner's Accumulation Account;
  - (ii) the proceeds, if any, of any policy or policies of insurance effected on the life of the Pensioner by the Trustee on behalf of the Fund and paid to the Fund; and
  - (iii) subject to the Relevant Law and the rules of the relevant Pension, when a pension is not reversionary or not permitted to be reverted, the amount standing to the credit of all of the Pensioner's Pension Accounts,

to one or more of the Pensioner's Dependants and/or legal personal representative as nominated by the Pensioner, in the proportions or amounts, and in the form (whether as a lump sum or Pension) indicated by the Pensioner in a Binding Death Benefit Nomination.

- (b) Subject to Clause 34.5(d), a Binding Death Benefit Nomination must be in a form approved by the Trustee from time to time and may take the form of that contained in Appendix 2.
- (c) A Binding Death Benefit Nomination must not require the Trustee to pay a Pensioner's Death Benefit in breach of the Relevant Law, and is ineffective to the extent it so requires.
- (d) In order for the Binding Death Benefit Nomination described in Clause 34.5(a) to be legally binding on the Trustee, the Pensioner must:—
  - (i) arrange for two (2) adult persons, neither of whom have been nominated as a Beneficiary, to witness the Pensioner's signature on the Binding Death Benefit Nomination; and
  - (ii) only nominate persons who are eligible under the Relevant Law to be a nominated beneficiary.
- (e) After the death of a Pensioner who was at the time of death still in receipt of a Pension paid from this Fund, the Trustee must pay the Death Benefit to the person or persons nominated by the Pensioner in accordance with the Binding Death Benefit Nomination provided by the Pensioner to the Trustee (if any) to the extent that the nomination is effective.
- (f) If the Trustee has not received a Binding Death Benefit Nomination in respect of a Pensioner, or to the extent that a Binding Death Benefit Nomination received in respect of the Pensioner is ineffective, the Trustee shall pay the Death Benefit (or that part not effectively disposed of by the Binding Death Benefit Nomination) to:—
  - (i) the Dependants and the legal personal representative(s) of the Pensioner or such one or more of them to the exclusion of the other or others and in such manner and proportions as the Trustee shall determine and as is permitted by the Relevant Law ; or
  - (ii) any individual or individuals as permitted by the Relevant Law.
- (g) Where a Death Benefit is payable:—
  - (i) under Clause 34.5(d); or
  - (ii) in accordance with a Binding Death Benefit Nomination that does not specify the form in which to pay the Death Benefit,

the Trustee shall pay the Death Benefit in one or more of the forms referred to in Clause 27.2.
- (h) Where the Trustee is paying a Death Benefit to a Beneficiary in the form of a Pension or an Annuity, the Trustee must cash the Benefit as a lump sum to the Beneficiary when and to the extent required by the Relevant Law.

### 34.6 Security of Pension

The capital value of a Pension and the income from the Pension cannot be used by a person as security for a borrowing.

## 35. OPERATION OF PENSIONS

- 35.1 Where a Member is entitled to receive all or part of his or her Benefit in the form of a Pension the Trustee must determine the terms and conditions of the Pension.

- 35.2 Where a Pension is payable to a Member/Pensioner, the Trustee must pay or otherwise deal with the Pension in accordance with the terms and conditions of that Pension contained in the governing rules of the Fund including but not limited to this Deed, trustee resolutions or a pension agreement.

## **36. CHANGING BENEFIT TYPE**

### **36.1 Application to Convert to Pension**

- (a) If a lump sum benefit or part of a lump sum benefit becomes payable to or in respect of a Member or a Beneficiary and if the recipient of that lump sum benefit wishes to convert all or part of that lump sum benefit to one or more Pensions permitted under this Deed, then the Recipient shall tender a Benefit Election Notice (in a form similar or substantially similar to Appendix 1) to the Trustee:-
- (i) within 30 days of becoming entitled to the lump sum benefit; or
  - (ii) within 30 days of receiving advice from the Trustee of the entitlement arising,
- whichever is the sooner.
- (b) Provided the election made by the Member or Beneficiary is not in breach of any provision of this Deed or of the Relevant Law, the Trustee shall immediately take such steps as are necessary to meet the requirements of the Benefit Election Notice received from the Member or Beneficiary.

### **36.2 Application to Commute to a Lump Sum**

On the written application of a Pensioner or Reversionary Beneficiary, the Trustee may commute to a lump sum benefit the whole or any part of any type of Pension payable from the Fund to such Pensioner or Reversionary Beneficiary as applicable provided that the commutation of the Pension is permitted by the Relevant Law and the rules of the Pension.

### **36.3 Application to Convert an Allocated Pension to an Account-based Pension**

If a Pensioner requests the Trustee in writing to convert all or part of an Allocated Pension being paid to or in respect of the Pensioner into an Account-based Pension, the Trustee may at its discretion, subject to the Relevant Law, do whatever is necessary to give effect to that request.

## **37. TRANSFER OF ASSETS**

The Trustee may with the agreement or at the request of a Member or Beneficiary to whom a Benefit is payable transfer any whole or part of one or more assets in specie, of equivalent value up to the amount of the Benefit in lieu of paying the whole or part of the amount otherwise payable provided that such transfer will not cause the Fund to fail to continue to be a complying superannuation fund.

## **38. VESTING OF BENEFITS**

The total amount of employer-financed benefits, which term shall include any productivity payment received in respect of any Member accruing to a Member of the Fund on or after the 1st July, 1986, and Member-financed benefits shall within the meaning of the Regulations vest in that Member on the day on which the benefits accrue and any amount arising directly or indirectly from contributions made by an Employer in relation to a Member in accordance with an award made or agreement certified by an industrial authority within the meaning of the Regulations shall likewise vest in the Member on that date being a date on or after the date of effect of the award or agreement.

## **39. PRESERVATION AND PORTABILITY OF BENEFITS**

- 39.1 The amount of any benefit vested in any Member in accordance with Clause 39 shall be preserved in accordance with the Relevant Law.
- 39.2 Any amount transferred to the Fund in relation to any Member pursuant to this Deed which is required by the Relevant Law to be preserved shall be preserved.

## **TRANSFER TO ANOTHER FUND**

In the event of a Member becoming eligible for Membership of another Approved Fund the Trustee may with the written consent of the Member permit, transfer or cause to be transferred to such other Approved Fund or to the Trustee of such other Approved Fund the whole or any part of the amount standing to the credit of that Member's Accumulation Account at the date of such transfer PROVIDED THAT the Fund to which such transfer is made shall be a Fund the terms and provisions of which comply with Relevant Law and prohibit payment of any Preserved Benefit PROVIDED ALWAYS THAT the Retiring Age and the age for payment of benefits under such Approved Fund shall not be earlier than that of this Fund except where an earlier age is allowed by the Relevant Law or approved by the Regulator as being -

- 40.1 applicable to all Members of such other Approved Fund; or
- 40.2 common to a particular class of Members of such Approved Fund.

## **TRANSFER FROM ANOTHER FUND**

The Trustee on such terms and conditions as it determines may receive from another Approved Fund moneys or other assets in respect of a Member's interest in that other Approved Fund and shall apply the same for the purpose of providing Benefits for or in respect of that Member and shall advise the Member in writing and no such Benefit shall be paid otherwise than as is authorised by this Deed and the Relevant Law.

## **INTERNAL ROLLBACKS**

The Trustee may, upon receiving a written request from a Member:-

- 42.1 retain an amount resulting from the commutation in whole or in part of a Pension payable to a Member from the Fund, after the commutation, for the purpose of providing Benefits to the Member or to Dependants and/or the legal personal representative of the Member in the event of the death of the Member; or
- 42.2 apply an amount resulting from the commutation in whole or in part of a Pension payable to a Member from the Fund immediately after the commutation, towards the provision of one or more other Pensions payable to the Member from the Fund; or
- 42.3 otherwise retain or apply any Superannuation Lump Sum of the Member as permitted by the Relevant Law,

in accordance with the Member's written request.

## **RETENTION OF BENEFIT IN FUND**

Where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable until:-

### **43.1 Request**

the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;

### **43.2 Death**

the Member dies in which event it will be paid in accordance with Clause 29.1;

### **43.3 Required by Law**

the provisions of the Relevant Law require the payment of the Benefit; or

### **43.4 Discretion**

the Trustee elects for whatever reason to pay the Benefit to the Member, former Member or Beneficiary,

## UNCLAIMED BENEFITS

The Trustee must comply with the Relevant Law in relation to Benefits which the Relevant Law:-

- 44.1 treats as unclaimed money; or
- 44.2 requires to be transferred to another fund.

## TERMINATION OF THE FUND

- 45.1 The Fund must be wound up on the happening of any of the following events:-
  - (a) if there are no Members;
  - (b) if the liabilities (excluding any liability for future Benefits payable to Members) of the Fund exceed the assets of the Fund;
  - (c) for any reason the Trustee resolves to terminate the Fund.
- 45.2 Upon the occurrence of an event referred to in Clause 45.1, the Trustee must give notice in writing to Members (if any) and all Employers that the Fund will be wound up on a specified date.
- 45.3 Following the giving of the notices referred to in Clause 45.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:-
  - (a) no further contributions, other than contributions due on or before the date specified in the notices referred to in Clause 45.2 may be accepted in respect of any Members; and
  - (b) no new Members may be admitted to the Fund; and
  - (c) as soon as practicable after the date specified in the notices referred to in Clause 45.2, the Trustee must make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the following payments:-
    - (i) Benefits which on or before giving the notices referred to in Clause 45.2 had become payable to a Member or the Member's Dependants; and
    - (ii) transfer the remaining Benefits of all remaining Members of the Fund to other Approved Funds;
    - (iii) if there are no Members and no liabilities in respect of the Fund, and there remains in the Fund an amount not applied or required for any other purpose, the Trustee must pay or apply the amount remaining for the benefit of any one or more persons who had been Members or Dependants of Members and in the shares and proportions and in the manner the Trustee determines subject to any direction received from the Regulator;
    - (iv) where the amount of a Benefit payable to a Member includes a preserved benefit, the Trustee must only pay or transfer the amount of the preserved benefit to another Complying Superannuation Fund or Approved Fund;
    - (v) when all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed and any amount remaining in the Fund has been paid or applied in accordance with this Deed, the Fund is deemed to be dissolved.

## STANDARDS FOR TRUSTEES AND MANAGERS

If the Trustee appoints an investment manager of the Fund, each such appointment shall be made in writing. The Trustee and any investment manager appointed shall observe the standards contained in the Relevant Law.