

Amendment to Superannuation fund trust deed

Kimgrats Super Fund

Kimgrats Super Pty Ltd ACN 105 138 903 (Trustee)

Superannuation fund trust deed

[insert name of fund]

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DETAILS

DATE: 23rd January 2009.

PARTIES

Name	Kimgrats Super Pty Ltd ACN 105 138 903
Short form name	Trustee
Notice details	20 Murray St, Hobart, Tasmania 7000.

BACKGROUND

- A. The Trustee has resolved to *continue the* fund known as KIMGRATS SUPER FUND ('Fund'), for the sole purpose of providing superannuation benefits for its Members and their Dependants.
- B. The Trustee has resolved to *continue to* act as trustee of the Fund.
- C. The Fund was established on the 3rd April 1981 by deed executed by the then trustee Butmac Managers Pty Ltd, and continued under the terms of that trust deed, the terms of which were subsequently replaced by trust deed dated 1st June 1985, amending deed of 5th September 1990, further amending deed of 22nd June 1992, further further amending deed dated 1st July 1994, deed of appointment and retirement of trustee of 18th June 2003, deed of further further further amending deed dated 30th August 2005, and the terms now of this present deed of amendment of the terms of the trusts, on the date of this Deed being the 23rd January 2009.
- D. This present amending deed is made by the trustee with the request and consent of the members of the Fund and is intended to replace the terms of the trust deed which applied immediately before the execution of this deed.

OPERATIVE PART

INTERPERSONAL MATTERS

1. *Defined terms & interpretation*

1.1 *Defined terms*

In this Deed unless the context otherwise requires, the words and expressions set out below have the following meanings:

'Act' means the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Corporations Act 2001 (Cth)* and includes any regulations, declarations or orders, exemptions or modifications made under those Acts or any other law, or any requirement of a Regulator, including:

- (a) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds;
- (b) which the Trustee or the Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Fund; or
- (c) which otherwise has or may have application to the Fund.

'Asset' means any asset that the Trustee holds for the purposes of the Fund.

'Associate' has the meaning given by the Act.

'Beneficiary' includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the Act.

'Benefit Arrangement' means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Special Account established under the *Small Superannuation Accounts Act 1995 (Cth)*.

'Benefit Schedule' means Schedule 2 to this Deed.

'Binding Death Benefit Nomination' means a direction which is a binding direction for the purposes of the Act as to payment of the Member's Death Benefit upon death of the Member.

'Child', in relation to a Beneficiary, includes a step child, an adopted child or an ex-nuptial child, or any other person who is a child for the purposes of the Act.

'Constitutional Corporation' has the meaning given by the Act.

'Contribution Splitting Application' means an application, in the form determined by the Trustee from time to time, made by a Member to the Trustee to roll over, transfer or allot an amount of benefits up to the amount of the splittable contributions (as defined in the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*) made for or on behalf of the Member for the benefit of the Member's Spouse, as contemplated by regulation 6.44 of the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.

'Death Benefit' means a benefit payable on a Member's death. It includes a benefit that became payable in respect of a Member before, but that is not actually paid until after, the Member's death and referred to in clause 12.6.

'Death Benefit Nomination' means an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination being either a written request or binding direction given by a Member requesting or directing the payment of a Death Benefit to specified persons in the proportions outlined in the nomination, as the case may be.

'Deed' means this Deed including the Schedules being the governing rules of the Fund as amended from time to time.

'Dependant', in relation to a Beneficiary, includes:

- (a) the Beneficiary's Spouse or Child;
- (b) any other person who, in the Trustee's opinion, is or was at the relevant time dependant on the Beneficiary;
- (c) any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and
- (d) any person who is a dependant within the meaning of the Act including any person with whom, in the Trustee's opinion, the Member or former Member at the relevant time has an Interdependency Relationship.

'Eligible Rollover Fund' has the meaning given by the Act.

'Employed Member' means a Member in respect of whom an Employer contributes to the Fund.

'Employee' means an employee of an Employer.

'Employer' means an employer of a Member who contributes to the Fund on behalf of the Member. Where used in reference to a particular Member, it means the Employer by whom the Member is employed at the relevant time.

'Employer Participation Terms' means the terms and conditions under which an Employer agrees to participate in the Fund in accordance with clause 10.

'Family Law Legislation' means:

- (a) the *Family Law Act 1975* (Cth), and the Regulations made under that Act; and
- (b) any other legislation, including the Act, that imposes legal requirements regarding the dealing with the interests of a beneficiary of superannuation fund in connection with a marital relationship, including on the breakdown of such a relationship, and associated matters.

'Family Law Requirement' means any requirement whatsoever under Family Law Legislation relating to superannuation benefits of parties or former parties to a marriage and incidental matters, including, without limitation, requirements regarding Payment Splits and the imposition of any other condition or restriction on, or variation of, a Beneficiary's interest in the Fund.

'Financial Instrument' includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument.

'Fund' means the fund referred to in Item 1 of Schedule 1 to this Deed and *continued* in accordance with this Deed.

'Gainful Employment' means employment or self employment for gain or reward in any business, trade, profession, vocation, calling or occupation or, if the Act prescribes a different meaning, has that meaning.

'General Schedule' means Schedule 1 to this Deed.

'Indicative Death Benefit Nomination' means a Death Benefit Nomination expressed to take effect as an indication of the Member's wishes as to payment of the Member's Death Benefit and referred to in clause 12.6.

'Interdependency Relationship' has the meaning given by the Act.

'Investment Option' means an investment strategy that may be chosen in respect of investments in the Fund in accordance with this Deed, and, where relevant, the portfolio of Assets related to that strategy.

'Liabilities' means all liabilities whatsoever of the Fund, and includes any provisions the Trustee makes in connection with such liabilities.

'Member' means a person who has been admitted as a member of the Fund in accordance with clause 9 and who has not ceased to be a Member in accordance with clause 9.7.

'Member's Account' means an account maintained in respect of a Member in accordance with clause 9.9.

'Members Account Balance' means the amount standing to the credit of a Member's Account, determined as described in clause 9.9(b).

'Member Spouse' has, in relation to an interest in the Fund, the same meaning as in the *Family Law Act 1975* (Cth).

'Non-Member Spouse' has, in relation to an interest in the Fund, the same meaning as in the *Family Law Act 1975* (Cth).

'Old Age Pensions' has the meaning given by the Act.

'Payment Flag' has the same meaning as in the *Family Law Act 1975* (Cth).

'Payment Split' has the same meaning as in the *Family Law Act 1975* (Cth).

'Policy' means an insurance policy arranged by the Trustee in accordance with clause 4.6.

'Policy Committee' means a policy committee established in accordance with clause 3.3(d).

'Preserved Benefits' means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits.

'Regulator' means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other government authority or entity or person appointed by or under an Act of Parliament as having responsibility for administering the laws governing superannuation funds or their ability to obtain income tax concessions.

'Reserve Account' means the Account referred to in clause 15.

'Retirement Age' means:

- (a) age 65; or
- (b) if the Act stipulates another age at which benefits can generally be paid from a regulated superannuation fund whether or not a Member has ceased Gainful Employment, that age.

'Rule' means a provision of a Schedule.

'Schedule' means a schedule to this Deed.

'Service' means:

- (a) in relation to an Employed Member, the most recent continuous service of the Member as an Employee. It includes:
 - (i) any period of absence from work attributable to injury or illness during which the Member receives workers' compensation or other regular income from the Employer or under arrangements organised by the Employer; and
 - (ii) any other period that the Employer stipulates is to be considered as Service.

(If a Member transfers service from one Employer to another, unless the Trustee and the relevant Employers otherwise agree, the Member's Service will be considered continuous); or

- (b) in relation to Members other than Employed Members, a period of Gainful Employment by the Member.

'Spouse', in relation to a person, includes:

- (a) another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as their husband or wife; and
- (b) any other person who is a spouse for the purposes of the Act.

'Successor Fund' has the meaning given by the Act.

'Tax' includes:

- (a) all actual or anticipated stamp, financial institutions, registration and any other duties, bank accounts debits tax and other taxes, levies, imposts, deductions, surcharges and charges whatsoever;
- (b) any income tax, capital gains tax, tax on contributions to the Fund (including any surcharge or additional contributions tax), income or capital gains tax on any earnings or gains of the Fund, any tax or benefit or termination payments and any other tax, charge or levy of any kind imposed or levied under any taxation legislation whether of the Commonwealth of Australia or otherwise;
- (c) any goods and services tax, value added tax or similar tax imposition or charge; and
- (d) any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraphs (a), (b) or (c).

‘Total and Permanent Disablement’ means:

- (a) if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, total and permanent disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the same meaning as the term permanent incapacity has for the purposes of the Act,

and **‘Totally and Permanently Disabled’** has a corresponding meaning.

‘Temporary Disablement’ has the meaning as defined in any Policy taken out by the Trustee for the purposes of providing a benefit to Members in that event or as agreed by the Trustee and insurer for the purposes of that Policy and **‘Temporarily Disabled’** has a corresponding meaning.

‘Transferable Benefits’ has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1993 (Cth)*.

‘Trustee’ means the trustee for the time being of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes any replacement or additional trustees.

1.2 *Compliance*

If the Act requires certain provisions to be included in the governing rules of a regulated superannuation fund, those provisions are (to the extent they are relevant to the Fund) deemed to appear in this Deed and to override any inconsistent provisions.

However, where the Regulator, if permitted by the Act, determines that a requirement that would otherwise be a requirement of the Act does not have to be complied with, either generally or specifically in relation to the Fund or the Trustee, then it is not a requirement of the Act for the purposes of this Deed unless the Trustee otherwise resolves.

1.3 *Interpretation*

In this Deed unless the contrary intention appears or can reasonably be implied from the context:

- (a) a reference to this Deed or any other instrument includes any variation or replacement of them;
- (b) a reference to a statute or other law includes regulations and other instruments (**‘subordinate instrument’**) made under such a statute or law and any consolidation, amendment, re-enactment or replacement of such a statute, law or subordinate instrument;
- (c) the singular includes the plural and vice versa;
- (d) terms such as 'including', 'for example' and similar expressions or words are not words or expressions of limitation;
- (e) a reference to a person:
 - (i) includes a body corporate, any other entity recognised at law, a partnership and any other group or organisation of persons;

- (ii) includes the Crown in right of the Commonwealth of Australia and any other entity recognised as a legal person at law;
- (iii) includes a person's legal personal representatives, successors and assigns; and
- (f) a reference to 'interest', 'earnings' or 'investment returns' or any such similar term can refer to either positive or negative 'interest', 'earnings' or 'investment returns';
- (g) if an expression is defined in the Act, but is not defined in this Deed, then that expression will have the meaning given to it in the Act;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) headings are inserted for convenience of reference only and are not to be taken into account in interpreting this Deed;
- (j) a reference to any thing (including any amount) is reference to the whole or any part of it;
- (k) a reference to a group of persons is a reference to any one or more of them; and
- (l) the Schedules form part of this Deed.

CONSTITUTION OF TRUST AND ADMINISTRATION

2. *The Fund*

2.1 *Assets*

The Fund comprises all Assets held by the Trustee at any time in accordance with this Deed.

2.2 *Name*

The name of the Fund is specified in the General Schedule. The Trustee may change the name or promote the Fund under a different name without the necessity of amending this Deed.

2.3 *Investment Options*

- (a) The Trustee may offer Investment Options in accordance with this clause 2.3.
- (b) The Trustee may offer a new Investment Option at any time.
- (c) On establishing an Investment Option, the Trustee will decide its name and other specifications relating to it (including the kinds of Asset or Assets to be held, the investment objectives and strategy and other relevant matters). The Trustee may change the name or other specifications at any time.
- (d) Subject to the Act, the Trustee may merge, divide or discontinue Investment Options at any time. In this event the Trustee will determine how the interests of Beneficiaries will be attributed between the Investment Options to reflect those changes.
- (e) The Trustee will ensure that the Assets and Liabilities associated with each Investment Option can be identified separately.

2.4 *Single trust*

Nothing in this Deed is to be taken as *continuing* or establishing a separate trust in respect of any Investment Option or any part of the Fund. Where the Trustee is liable to pay amounts in respect of Beneficiaries or Employers, then that liability relates to all Assets of the Fund and is not limited to the Assets attributable to any particular Investment Option or other part of the Fund.

3. *Trustee*

3.1 *Trustee*

The person or persons named in the General Schedule is or are *continued as the Trustee* with effect from the date of this Deed.

3.2 *Regulated superannuation fund*

- (a) Subject to clause 3.2(b), the Trustee must be a Constitutional Corporation.
- (b) Despite clause 3.2(a), the Trustee may be, or include a person or persons, other than a Constitutional Corporation, but in that event and for so long as that situation continues, the primary purpose of the Fund will be the provision of Old Age Pensions in accordance with Part 2 of the Benefit Schedule.

3.3 *Conditions*

- (a) A person that is to be appointed as Trustee must give written consent to the appointment in accordance with the Act before accepting/*continuing* the appointment.
- (b) An additional person or persons may be appointed as Trustee by deed.
- (c) The Trustee must otherwise comply with any other requirements of the Act (including for example, requirements under the Act for approval by the Regulator, requirements as to the qualifications or identity of the person or persons appointed as Trustee or, where relevant, officers or directors of the Trustee, or requirements as to representation of Members and Employers).
- (d) If required by the Act, the Trustee will appoint one or more Policy Committees representing Members or groups of Members on a basis determined by the Trustee in accordance with the Act. A Policy Committee may advise the Trustee on issues related to those Members.

3.4 *Termination of Trustee's office*

- (a) A Trustee will hold office until:
 - (i) the Trustee retires in accordance with clause 3.4(b);
 - (ii) being a Constitutional Corporation, it goes into liquidation or has a receiver appointed or enters into administration;
 - (iii) the Trustee is removed, or ceases to be eligible to act as Trustee under the Act; or
 - (iv) being a natural person, the Trustee dies.
- (b) A Trustee may retire at any time.
- (c) If a Trustee:
 - (i) retires;

- (ii) becomes aware that it will be removed as Trustee;
- (iii) becomes aware that it will cease to be eligible to act: as Trustee; or
- (iv) is otherwise disqualified or removed from its office as Trustee,

it must appoint another person to act as Trustee that otherwise complies with the Act (unless there is more than one Trustee and the Act does not require the vacancy to be filled). The terminating Trustee and new Trustee will record the retirement and appointment in a deed.

- (d) To the extent permitted by any relevant law, it is expressly provided that the appointment of a new trustee will take effect as outlined in a deed made in accordance with clause 3.4(c) notwithstanding that the deed has not been or was not registered with any register of deeds or similar form of public record.
- (e) If the Act or any other law does not permit the terminating Trustee to appoint a new Trustee in accordance with clause 3.4(c) or the terminating Trustee fails to do so, the new Trustee may be appointed:
 - (i) where management of the affairs of the Trustee has been placed under a liquidator, receiver, manager, administrator or other controller, by that person;
 - (ii) where paragraph (i) does not apply, or where it does apply but the controller fails to appoint a new Trustee within 30 days of the vacancy arising, by vote of the Employers, or where there are no Employers, by vote of the Members;
 - (iii) by the continuing Trustee or Trustees if that appointment and the holding of office by the new Trustee is consistent with the Act; or
 - (iv) in accordance with any procedure prescribed by the Act.
- (f) If the governing law of this Fund is that of New South Wales, neither section 6, section 7 nor section 8 of the *Trustee Act 1925* (NSW) apply to this Fund.

3.5 *Transfer of Assets*

If a Trustee's office terminates, it must:

- (a) provide to any Trustee all records, information and other property relating to the Fund in its control; and
- (b) otherwise do such acts, matters and things as may be necessary to perfect or complete the appointment of a new Trustee.

3.6 *Trustee – other appointments*

The Trustee may, while acting as trustee of the Fund, also act as trustee of other Benefit Arrangements.

3.7 *Trustee – power to appoint*

Without limiting any other power conferred on the Trustee by this Deed or law, the Trustee has power to appoint any additional trustee by deed. This power is to be exercised subject to any relevant provision of the Act.

4. *Trustee powers, discretions and duties*

4.1 *Powers*

Subject to the Act, the Trustee:

- (a) is empowered to do anything whatsoever necessary or desirable for the purpose of maintenance, operation, management, development or promotion of the Fund;
- (b) may regulate and conduct Trustee meetings, or if the Trustee is a corporation, meetings of its directors, as it considers appropriate;
- (c) has, in addition to the powers conferred by this Deed, all the powers conferred on a trustee by statute or general law; and
- (d) has the power to establish and implement from time to time and as it thinks fit, business rules relating to matters to be done or effected under this Deed, with full power to amend, repeal and vary the same. Such business rules must be consistent with the provisions of the Act and this Deed (certain specific business rules are set out in clause 4.2(j)).

4.2 *Examples of powers*

Without limiting clause 4.1, and in addition to any powers described elsewhere in this Deed, the Trustee has power:

- (a) to appoint agents and delegates on terms it thinks appropriate;
- (b) to attribute Assets and Liabilities to relevant Investment Options and change the attribution as it considers appropriate;
- (c) to make any arrangements it considers appropriate in respect of Tax, including:
 - (i) allocation of actual or expected Tax benefits or liabilities between Beneficiaries on any basis that it considers appropriate;
 - (ii) deduction of amounts in respect of Tax or expected Tax that it considers appropriate and retention of such amounts in the Fund pending payment to the relevant authority;
 - (iii) re-calculation of Tax in respect of a Beneficiary or former Beneficiary and making any arrangements that it considers appropriate in connection with any such re-calculation; and
 - (iv) transfer of Tax liabilities;
- (d) to attribute Liabilities between Beneficiaries on such basis as it considers appropriate;
- (e) to pay any commission, brokerage or other fees to a person who contributes or transfers Assets to the Fund or arranges for such transactions;
- (f) to enter or acquire (including by way of assignment), and to discontinue or surrender one or more Policies in connection with benefits to be paid from the Fund, including Policies relating to life, disability or accident insurance or in order to provide one or more annuities. Any such Policy may be made on terms and conditions that the Trustee considers appropriate;
- (g) to require Beneficiaries or Employers to provide any information that the Trustee reasonably requires to carry out its powers or duties;
- (h) to meet and pay all Liabilities out of the Fund;

- (i) to the extent permitted by the Act, to obtain indemnity insurance in respect of liabilities incurred by the Trustee and, where the Trustee is a corporation, its directors, officers or associates, arising out of, or in connection with, performance of duties and exercise of powers relating to the Fund;
- (j) to make business rules relating to:
 - (i) minimum amounts for contributions, transfers of amounts into the Fund, switches between Investment Options, Member's Account Balances, withdrawals and any other matters;
 - (ii) rounding off of contributions, transfers and benefit payments;
 - (iii) default arrangements (for example, where a Member does not specify an Investment Option as mentioned in clause 14.1(d));
 - (iv) the circumstances in which transfers may be made from one Investment Option to another;
 - (v) the calling of any Member meetings and procedures for those meetings; and
 - (vi) any other matters whatsoever relating to maintenance, management, operation or development of the Fund.

Different business rules may be applied to different Beneficiaries, Employers and Investment Options.

Specific business rules may be taken to qualify general provisions of this Deed;

- (k) to establish and operate any accounts and sub-accounts as it considers appropriate;
- (l) to elect that the Fund become a regulated superannuation fund under the Act;
- (m) to act on direction given by a Court, the Regulator or the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993* (Cth);
- (n) to comply with covenants of Trustees imposed by the Act;
- (o) to adjust the interests of Members to compensate for any differential Tax benefits (for example, to allow for the fact that a current pensioner might not otherwise benefit from dividend imputation credits in respect of certain investments);
- (p) to generally act in accordance or consistently with any relevant Family Law Requirement and to do such acts matters and things as are necessary to achieve compliance with same and the Family Law Legislation; and
- (q) to act on any evidence or presumptions that it considers appropriate.

4.3 *Compliance*

Without limiting anything in clause 4.1, the Trustee may:

- (a) do anything that the Trustee considers necessary or desirable in order to comply with the Act; and
- (b) refrain from actions that the Trustee might otherwise be empowered or obliged to do if the Trustee considers it necessary or desirable in order to comply with the Act.

4.4 *Discretions*

The Trustee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under this Deed;
- (b) may exercise any of the Trustee's powers at any time;
- (c) may refrain from exercising any of the Trustee's powers from time to time or at all;
- (d) may exercise a power even if the Trustee or any of the Trustee's Associates have an interest that may be affected by the exercise of that power;
- (e) may enter arrangements with Associates, Beneficiaries, Employers or other persons in connection with the Fund and retain for the Trustee's own benefit, any commission, profit or other gain received in connection with such arrangements;
- (f) may, where it has power to do or decide something under this Deed, do that thing or make the decision, and vary any such act or decision, at any time;
- (g) is not obliged, where it exercises a discretion under this Deed, to provide reasons for the way in which it has exercised the discretion unless the Act or the law require otherwise; and
- (h) may exercise a power even if the Trustee or any of the Trustee's Associates has any interest as a Beneficiary that may be affected by the exercise of that power and may exercise the power such that the interests of the Trustee or any Associate are advanced, preferred or better secured over those of any other Beneficiary or class of Beneficiary.

4.5 *Fees*

Subject to the Act, the Trustee may charge fees and set the amount of those fees and the circumstances in which they will be charged. Different fees may be charged in respect of different Beneficiaries, Employers and Investment Options. Fees may be paid to the Trustee from the Fund.

4.6 *Policies*

Subject to the Act, the trustee has power without limiting any other provision of this Deed to enter or acquire, including by way of assignment, a Policy or Policies in connection with any benefit to be paid from the Fund, including any Policy relating to life, disability or accident insurance or in order to provide one or more annuities or other form of insured benefit to the extent permitted by the Act. Any such Policy may be made on terms and conditions that the Trustee considers appropriate.

5. *Limitation of liability*

5.1 *Limitation*

Subject to clause 5.2, no Trustee or, where the Trustee is a corporation, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason. This limitation applies whether or not the loss or detriment arises from an act or omission on the part of the Trustee, director or officer.

5.2 *Exceptions*

Clause 5.1 does not apply:

- (a) to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise;
- (b) in any other circumstance specified by the Act in which the liability of a trustee or director or officer of a trustee of a regulated superannuation fund may not be excluded or limited; or
- (c) where the limitation expressed in clause 5.1 would not otherwise be enforceable at law.

6. *Indemnity*

6.1 *Indemnity*

The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under this Deed.

6.2 *Payment and reimbursement*

Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:

- (a) to meet the indemnities referred to in clause 6.1; and
- (b) to meet all Liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

To this end, to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

7. *Investment*

7.1 *General*

- (a) Subject to the Act, the Trustee may invest the Assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the Assets.
- (b) Without limiting clause 7.1(a), the Trustee has power:
 - (i) to vary, substitute, charge or otherwise deal with Assets in any manner;
 - (ii) to acquire an interest in an Asset jointly with any other person and mix Assets of the Fund with other property (as long as separate records are maintained that enable Assets attributable to the Fund or any Investment Option to be identified);
 - (iii) to sell any Asset by private sale or public auction, for cash or on terms or in any other way or subject to any other terms that the Trustee considers appropriate;
 - (iv) to allow any Asset to be held in the Trustee's name or that of any other person acceptable to the Trustee;
 - (v) to exercise any power whatsoever in connection with any Asset;

- (vi) to make a loan or give financial assistance to any person;
- (vii) to borrow or raise money for any purpose permitted by the Act and secure the repayment of that money in any manner and on any terms and conditions and at the rate of interest it considers appropriate;
- (viii) to:
 - (A) acquire and use Financial Instruments in any manner whatsoever consistent with the Trustee's investment strategy for the Fund, or for any Investment Option, including for the purposes of risk management and enhancing investment returns or in substitution for physical holdings; and
 - (B) apply Assets to meet expenses associated with any such acquisition or use of Financial Instruments; and
- (ix) to appoint investment managers and custodians, subject to any requirements of the Act.

7.2 *Investment strategy*

Investments of the Fund must be made in accordance with an investment strategy formulated by the Trustee that complies with the Act.

7.3 *Reserves management*

The Trustee must formulate and give effect to a strategy for prudential management of any reserves maintained in the Fund, consistent with the Act.

7.4 *Valuation*

Subject to the Act, the Trustee will arrange for valuations of Assets at such times and on such basis as it considers appropriate.

7.5 *Investment earnings*

Subject to the Act, the Trustee will determine the rate of investment earnings, whether positive or negative, to be applied for the purposes of this Deed, having regard where relevant to the Investment Options applicable and may determine interim rates on a similar basis.

8. *Records, audit and information*

8.1 *Requirements of Act*

The Trustee must, in accordance with the Act:

- (a) keep records and accounts for the Fund;
- (b) prepare financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund; and
- (e) provide information to Beneficiaries, prospective Members, Employers, prospective Employers, a Regulator and any other person in connection with the Fund.

8.2 *Requirements of Family Law Legislation*

Without limiting anything else herein contained, the Trustee must comply with all relevant requirements of the Family Law Legislation in relation to provision of information to any affected person in connection with the Fund and the interest or claims of any Member, Member Spouse or Non-Member Spouse therein.

RIGHTS AND ENTITLEMENTS

9. *Membership*

9.1 *Eligibility and Participation in Different Capacities*

The Trustee may set eligibility conditions for membership of the Fund.

9.2 *Acceptance*

(a) Membership applications:

- (i) may be made by a person who wishes to become a Member or by a person on behalf of a prospective Member (eg an Employer or spouse of the person); and
- (ii) must be made in the form provided in Schedule 3 or in another form acceptable to the Trustee.

Schedule 3 provides, in Part 1, the form of application and, in Parts 2 and 3 respectively, nomination forms to be used depending on whether the Member will make either an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination under clause 12.6(d).

(b) The Trustee may:

- (i) accept or reject any application; and
- (ii) establish arrangements under which people satisfying certain eligibility conditions (eg Employees of an Employer) may become Members provisionally from a certain date unless the Trustee subsequently rejects the application.

9.3 *Information*

Without limiting clause 9.2, the Trustee may require a prospective Member or a person admitted as a Member to undergo a medical examination and to provide any relevant information.

9.4 *Timing*

If a membership application is accepted, the person's membership will commence from:

- (a) the date on which the Trustee accepts the application; or
- (b) another date agreed by the Trustee and the Member or, if the Member is an Employed Member, the relevant Employer.

9.5 *Deed*

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by, the Deed.

9.6 *Member's attorney*

Each Member irrevocably appoints the Trustee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.

9.7 *Termination of Beneficiary's interest*

- (a) A person ceases to be a Beneficiary when:
 - (i) all benefits to which the Beneficiary has become entitled under this Deed have been paid;
 - (ii) the whole of the Member's Account Balance relating to that Beneficiary has been transferred out of the Fund in accordance with clause 13.2;
 - (iii) the Beneficiary dies; or
 - (iv) the Beneficiary's entitlement to benefits is otherwise terminated.
- (b) In addition to the circumstances described in clause 9.7(a), the Trustee may decide that a person will cease to be classified as a Member if a pension begins to be paid in respect of the person, unless the Act otherwise requires. To avoid doubt, a benefit payable on a Member's Temporary Disablement in accordance with Rule 3.2 of Part 1 of the Benefit Schedule is not to be considered a pension.

9.8 *Beneficiaries' interests and liabilities*

- (a) No Beneficiary has any interest in any particular Asset of the Fund. Beneficiaries must not:
 - (i) interfere with the exercise of the Trustee's powers; and
 - (ii) assert any right in respect of any Asset or part of an Asset.
- (b) The liability of Beneficiaries in connection with the Fund is limited as described below:
 - (i) the Trustee's right of indemnity and the right of recourse of any creditor is limited to the Fund's Assets; and
 - (ii) Beneficiaries are not liable (in their capacity as Beneficiaries):
 - (A) to indemnify the Trustee in respect of any deficiency in the Fund; or
 - (B) in connection with claims by any of the Trustee's creditors relating to the Fund.
- (c) The rights of Beneficiaries to receive benefits are those set out in this Deed.

9.9 *Member's Account*

- (a) The Trustee will maintain a Member's Account in respect of each Member for the purpose of recording benefit entitlements under this Deed.
- (b) The Member's Account Balance at any time is determined by **adding**:
 - (i) contributions in respect of the Member and amounts transferred to the Fund in respect of the Member under clause 13.1;
 - (ii) investment earnings, determined having regard to clause 7.5, the requirements of the Act, and any Investment Options applicable to the Member;

- (iii) the proceeds of any Policy in respect of the Member; and
- (iv) any other amount that the Trustee considers should be credited to the Member's Account;

and deducting the sum of:

- (v) benefits paid from the Member's Account or transferred to another Benefit Arrangement in accordance with clause 13.2;
 - (vi) any negative investment returns, determined having regard to clause 7.5, the requirements of the Act, and any Investment Options applicable to the Member;
 - (vii) any costs or fees deducted from the Member's Account or any other Liabilities attributed to it;
 - (viii) any amounts in respect of Tax deducted from the Member's Account; and
 - (ix) any other amount that the Trustee considers should be deducted from the Member's Account.
- (c) More than one Member's Account may be maintained in respect of a Member if a Member participates in the Fund in more than one capacity (for example, as an Employed Member and otherwise). If so, provisions dealing with a Member's Account will be applied separately to the separate Member's Accounts.

9.10 *Special Arrangements*

- (a) Subject to the Act, the Trustee and a Member may agree at any time that special conditions will apply to the Member in place of those that would otherwise apply under this Deed.
- (b) Any special arrangements of the type referred to in clause 9.10(a):
 - (i) must be recorded in writing; and
 - (ii) may be varied at any time by further agreement in writing between the Trustee and Member.

10. *Participation of Employers*

10.1 *Application*

Employers may apply to participate in the Fund by completing an application in the form as prescribed by the Trustee from time to time. The Trustee for these purposes may prescribe the form set out in Schedule 4 or some other form.

10.2 *Timing*

If an Employer participation application is accepted, the Employer's participation will commence from:

- (a) the date on which the Trustee accepts the application; or
- (b) another date agreed between the Trustee and Employer.

10.3 *Deed*

Each Employer is deemed to have approved of, and becomes bound by, the Deed.

10.4 *Termination – circumstances*

- (a) An Employer's participation in the Fund terminates if:
 - (i) the Employer gives written notice to the Trustee that it wishes to terminate its participation;
 - (ii) there are no Members relating to that Employer or the Employer is dissolved as a legal entity (or the Trustee becomes aware that it is about to be dissolved) and the Trustee considers that participation should be terminated; or
 - (iii) the Trustee otherwise decides that the Employer's participation should terminate.
- (b) In this event the Trustee will decide the date on which the termination will take effect ("**Termination Date**").

10.5 *Termination – effects*

If an Employer's participation terminates, then unless the Trustee otherwise agrees, the following provisions will apply:

- (a) no further contributions may be accepted from that Employer or the relevant Members and any arrears due to the Termination Date must be paid;
- (b) any benefits payable on or before the Termination Date will be paid;
- (c) the Member's Account Balance for each of the Beneficiaries concerned may be retained in the Fund or transferred to another Benefit Arrangement selected by the Trustee. The Trustee may have regard to the views of the relevant Employer in selecting another Benefit Arrangement; and
- (d) any portion of the Reserve Account attributable to the terminating Employer will be dealt with in accordance with arrangements nominated by the Employer, but subject to the Act.

10.6 *Rights not affected*

Nothing in this Deed limits an Employer's rights to dismiss an Employee or may be used to increase liability for damages in any proceedings relating to an Employee's dismissal.

10.7 *Payments to an Employer*

The Trustee may pay money from the Fund to an Employer subject to the Act.

10.8 *Employer obligations*

Nothing in this Deed is to be taken as imposing any fiduciary obligations on an Employer in connection with the exercise of any powers relating to the Fund.

11. **Contributions**

11.1 *Powers*

- (a) Subject to the Act, the Trustee may accept contributions from:
 - (i) Members or prospective Members;
 - (ii) Employers;
 - (iii) a Spouse of a Member or prospective Member; or
 - (iv) any other person and in any circumstance permitted by the Act.

- (b) Without limiting this clause 11, the Trustee may accept a shortfall component, as defined in the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, in respect of a Member.

11.2 *Cash or assets may be contributed*

Contributions may be made either in cash or by transfer to the Trustee of an asset in specie. However, if a contribution is made by transfer of an asset in specie, then that contribution may only be accepted by the Trustee if this is permitted by the Act. If a contribution is made by the transfer of an asset to the Trustee, the amount of the transfer will be the market value of that asset at the time of its transfer, and the transfer will be undertaken on such terms and conditions as are determined by the Trustee.

11.3 *Acceptance of contributions*

Notwithstanding any other provision of this Trust Deed, the Trustee:

- (a) may accept additional contributions from any person in respect of a Member to the extent permitted by Relevant Law;
- (b) must not accept and may reject any contribution if, in the opinion of the Trustee, the acceptance of the contribution would not be permitted by Relevant Law; and
- (c) may return or refund any contribution received from any person in respect of a Member to the extent permitted by Relevant Law, adjusted for fees, costs and investment earnings,

and must make any appropriate adjustment to benefits as a result of any refusal, rejection, return or refund of contributions.

11.4 *Allocation of contributions*

If required by the Act, the Trustee must allocate relevant contributions to a Member's Account to the extent provided by the Act and within any relevant timeframe set out in the Act.

11.5 *Contribution splitting*

- (a) Unless a contrary intention appears, words and phrases used in this clause 11.5 have the same meanings as in the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.
- (b) Notwithstanding any other provision of this Deed, but subject to the Act, where the Trustee receives from a Member a Contribution Splitting Application which is not invalid under the Act, the Trustee may in its absolute discretion determine to split the splittable contributions received for the Member during the financial year applicable to the Contribution Splitting Application.
- (c) Where the Trustee under clause 11.5(b) determines to split the Member's splittable contributions, notwithstanding any other provision of this Deed but subject to the Act, the Trustee may:
 - (i) either:
 - (A) if a receiving spouse is not a Member, create a new interest in the Fund for the receiving spouse and credit the amount set out in the Contribution Splitting Application to that interest, in which case the Trustee may determine the terms and conditions that will apply to the new interest;

- (B) if the receiving spouse already has an interest in the Fund, credit the amount set out in the Contribution Splitting Application to the receiving spouse's existing interest; or
- (C) transfer or roll over the amount set out in the Contribution Splitting Application to an Benefit Arrangement for the receiving spouse; and
- (ii) adjust the interest of the applicant Member in such manner as it considers appropriate to reflect the splitting of the Member's splittable contributions pursuant to clause 11.6(c)(i).
- (d) The Trustee may from time to time specify conditions and restrictions relating to Contribution Splitting Applications ("**Contribution Splitting Rules**") which, in addition to the requirements of the Act, must be complied with by the Member and receiving spouse in order for a Contribution Splitting Application to be valid. The Contribution Splitting Rules may also set out rules regulating the splitting of contributions.
- (e) The Trustee may vary or revoke the Contribution Splitting Rules from time to time in its absolute discretion.
- (f) The Trustee may charge reasonable fees in respect of any thing done by the Trustee in relation to the splitting of contributions under this clause 11.5.

12. *Benefits: General provisions*

12.1 *Schedules*

Particulars regarding calculation of benefits and the circumstances in which they are payable appear in the Benefit Schedule.

12.2 *Conditions and evidence*

The Trustee may impose any reasonable conditions regarding payment of a benefit. For example, it may require Beneficiaries to produce evidence of entitlement.

12.3 *Policy*

- (a) If a benefit would ordinarily include an insured component under a Policy (for example a benefit payable on the Member's death or disablement) but:
 - (i) no amount is paid under that Policy; or
 - (ii) the amount paid under the Policy is less than the amount that would ordinarily be payable,

the amount payable to the Member may be adjusted accordingly.
- (b) This clause is:
 - (i) for the protection of the Trustee and the Fund; and
 - (ii) not to be taken as conferring any rights on Beneficiaries in respect of benefits additional to those conferred under other provisions of this Deed.

12.4 *Method*

Benefits may be paid by any method that the Trustee considers appropriate.

12.5 *Circumstances and amounts – general*

- (a) Benefits:
 - (i) may, in addition to any specific circumstance described in the Benefit Schedules, be paid in any other circumstance permitted by the Act. For example, benefits may be paid in the event of a Member's financial hardship and on compassionate grounds as provided by the Act. However, the Trustee is not obliged to pay benefits in those other circumstances unless it agrees to do so or the Act compels it to do so;
 - (ii) must be paid in the form and in the circumstances in which the Act compels benefits to be paid;
 - (iii) may be paid in any form and in any circumstances in which the Act permits benefits to be paid;
 - (iv) will, except where the Deed otherwise provides, be paid in lump sum form. However, the Trustee and a Beneficiary may agree for benefits to be paid wholly or partly in pension form, funded either directly or indirectly and either wholly or partly by way of purchase of an annuity;
 - (v) may, where payable in lump sum form, be paid in more than one instalment;
 - (vi) may at a Member's request be retained wholly or, partly in the Fund with the Trustee's agreement and if the Act permits, until paid in accordance with this Deed; and
 - (vii) will generally be paid as soon as practicable. However, subject to the Act, the Trustee may, where it considers it appropriate, arrange for payments to be delayed for a reasonable period determined by the Trustee.
- (b) Except where this Deed provides otherwise or the Trustee otherwise determines, the amount of any benefit will be an amount not:
 - (i) exceeding the Member's Account Balance; or
 - (ii) less than any amount required under the Act.
- (c) Subject to the Act, the Trustee may otherwise apply an amount standing to the credit of a Reserve Account in augmenting any benefit actually or prospectively payable to or in respect of a Member, a former Member, any Dependant of a Member or former Member or any other person as the Trustee sees fit.

12.6 *Death Benefits*

- (a) This clause 12.6 applies to Death Benefits. To avoid doubt, it does not apply to a Member's Account or any portion of a Member's Account relating to benefits that has already begun to be paid or applied for payment of a benefit in pension form.
- (b) A Death Benefit to which this Clause applies must, subject to the remaining provisions of this clause 12.6, be paid in proportions decided by the Trustee to one or more of the following:
 - (i) one or more of the Member's Dependents; and
 - (ii) the Member's legal personal representative.
- (c) Subject to the Act, if after making enquiries that it considers reasonable the Trustee cannot locate any Dependents or the legal personal representative, the

benefit may be paid to any other person that the Trustee chooses or in any other manner.

- (d) For the purposes of this clause 12.6, the following provisions apply:
 - (i) members may give the Trustee a Death Benefit Nomination;
 - (ii) a Death Benefit Nomination may be an Indicative Death Benefit Nomination, or, alternatively, but subject to the Act, a Binding Death Benefit Nomination as to payment of the Death Benefit payable in respect of the Member;
 - (iii) subject to any requirements of the Act, members may vary Death Benefit Nominations at any time;
 - (iv) Death Benefit Nominations must be in the form included in either Part 2 or Part 3 of Schedule 3;
 - (v) the Trustee may disregard an Indicative Death Benefit Nomination if it does not comply with any formal requirements set by the Trustee; and
 - (vi) subject to the Act, the Trustee must disregard a Binding Death Benefit Nomination if it does not comply with the formal requirements of the Act.
- (e) The Trustee will treat a Binding Death Benefit Nomination made in accordance with the form contained in Part 3 of Schedule 3 or any other form acceptable to the Trustee as a binding direction and nomination and effect payments in accordance with the Death Benefit Nomination, provided it is given in accordance with the requirements of the Act and it is current and valid at the date of the Member's death.

12.7 *Transfer of Assets*

Subject to the Act (including any requirement for approval by the Regulator) where the Trustee is obliged to pay a benefit, it may at the request of the Beneficiary meet that obligation wholly or partly by transferring one or more Assets of equivalent value to the Beneficiary.

12.8 *Bankruptcy and assignments*

- (a) Subject to the Act, a Beneficiary's interest under this Deed will be forfeited if:
 - (i) a Beneficiary attempts to assign, alienate or charge all or part of their interest under this Deed; or
 - (ii) any other event occurs that results in a person other than the Beneficiary becoming entitled to that interest (except an event that produces that result because of a provision of this Deed).
- (b) Subject to the Act, the amount representing any interest that is forfeited in accordance with this clause may be applied in proportions decided by the Trustee for the benefit of one or more of the Beneficiary, former Beneficiary or Beneficiary's Dependants as the Trustee considers appropriate.

12.9 *Minor Beneficiaries or those without legal capacity*

If:

- (a) a Beneficiary is a minor;

- (b) the Trustee believes that a Beneficiary is unable to manage their financial affairs because of legal incapacity; or
- (c) the Trustee otherwise considers it appropriate for any reason,

the Trustee may, subject to the Act, pay some or all of the amount payable in respect of the Beneficiary to another person including the guardian or legal personal representative of that person to be applied for the benefit of the Beneficiary. The receipt of the person to whom the benefit is paid is a complete discharge to the Trustee in respect of that benefit. The Trustee may impose any terms on such a payment that it considers appropriate.

12.10 *Discharge*

The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Trustee has no obligation to see how the payment is applied.

12.11 *Deductions*

Subject to the Act, the Trustee may deduct fees and amounts in respect of Liabilities and Tax from any benefit payment. (This is not intended to restrict the Trustee from deducting fees or recovering such amounts in any other way if permitted by the Act or law).

12.12 *Non-member spouses*

- (a) In this clause 12.12, 'member spouse' and 'non-member spouse' have the same meanings as in section 90MD of the *Family Law Act 1975* (Cth).
- (b) Notwithstanding any other provision of this Trust Deed, but subject to subclause (c) and the Relevant Law, the Trustee may create a new interest in the Fund at the Trustee's discretion for a non-member spouse as contemplated by the Relevant Law, in which case:
 - (i) when creating a new interest in the Fund for a non-member spouse, the Trustee may determine the terms and conditions that will apply to the new interest;
 - (ii) the Trustee may adjust the benefit of the member spouse in such manner as it considers appropriate to reflect the creation of a new interest for the non-member spouse;
 - (iii) if the non-member spouse is already a Member, the amount that would otherwise be applied to create the non-member spouse's interest may instead be applied to increase the non-member spouse's existing interest in the Fund; and
 - (iv) the Trustee may make rules from time to time that apply to a Member for whom an interest was created in accordance with this clause 12.12 and who was not previously a Member.
- (c) A non-member spouse is not permitted to become a Member or other kind of member if the value of the new interest that would otherwise be created for the non-member spouse, as at the date of creating the new interest, would be less than the minimum investment amount (if any) at that date. In this clause 12.12(c), 'minimum investment amount' means the minimum one-off initial contribution that a person must make in order to become a Member and participate in the

Fund, as set out in the relevant disclosure document or such lesser amount as the Trustee may from time to time determine for the purposes of this clause 12.12(c).

13. Transfers

13.1 Transfers in

Subject to the Act, the Trustee may accept into the Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Benefit Arrangement.

13.2 Transfers out

- (a) The Trustee may transfer the whole or part of any amount held in the Fund in respect of a Member to another Benefit Arrangement.
- (b) The Trustee may make such a transfer without the Member's consent where the Act permits (including to a Successor Fund or an Eligible Rollover Fund).
- (c) The Trustee may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the Act (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997* (Cth)) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the Act.
- (d) A transfer of an amount under this clause 13.2 is a complete discharge to the Trustee in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred.

14. Investment Options

14.1 Selection of Investment Options

Amounts may be attributed to one or more Investment Options as follows:

- (a) in the case of an amount in a Member's Account attributable to an Employed Member, to the Investment Options requested by:
 - (i) the Employer; or
 - (ii) the Member, if the Employer Participation Terms permit, and accepted by the Trustee;
- (b) in the case of an amount in the Reserve Account attributable to an Employer, to the Investment Options requested by the Employer and accepted by the Trustee;
- (c) in the case of an amount in the Member's Account to which paragraph (a) does not apply, to the Investment Options requested by the Member and accepted by the Trustee; and
- (d) either:
 - (i) if an Investment Option is merged, divided, discontinued or temporarily suspended, in accordance with arrangements selected by the Trustee, which may (but need not necessarily) be made after seeking a request from the Member or Employer, as the case may be; or
 - (ii) if no Investment Option is requested, or the Trustee does not accept a request referred to in paragraphs (a), (b) or (c), in accordance with default arrangements selected by the Trustee.

14.2 *Switches*

- (a) A Member may apply to switch amounts between Investment Options.
- (b) In the case of Employed Members, switches are only permitted if the Employer Participation Terms permit.
- (c) Employers may apply to switch amounts:
 - (i) attributable to Employed Members who are Employees of the Employer;
or
 - (ii) in the Reserve Account attributable to the Employer,between Investment Options.
- (d) The Trustee may accept or reject a switch application and, if it accepts an application, determine the date on which it takes effect.

14.3 *Order of debiting*

- (a) Where there are two or more Investment Options attributable to a Beneficiary, the order in which debits relating to the Member's Account (including those relating to benefit payments) will be attributed to those Investment Options is as described below:
 - (i) in the case of Employed Members in accordance with arrangements accepted by the Trustee and selected by:
 - (A) the Employer; or
 - (B) if the Employer Participation Terms permit, the Member;
 - (ii) in other cases, in accordance with arrangements selected by the Member and accepted by the Trustee; and
 - (iii) if no selection is made, or the Trustee does not accept a selection referred to in paragraphs (i) or (ii), in accordance with default arrangements selected by the Trustee.
- (b) The Trustee:
 - (i) may determine the form in which a selection referred to in clause 14.3(a) is to be made; and
 - (ii) may suspend a selection made in accordance with clause 14.3(a).

15. *Reserve Account*

15.1 *Maintenance of Account*

A Reserve Account may be maintained in respect of each Member and Employer.

15.2 *Credits*

Subject to the Act, the following amounts may be credited to a Reserve Account:

- (a) amounts transferred from another Benefit Arrangement that are not allocated to any Member's Account;
- (b) any amount in a Member's Account that is not required or that cannot be applied to pay benefits in respect of the Member;
- (c) any investment earnings determined having regard to clause 7.5, the requirements of the Act, and any Investment Options applicable; and

- (d) any other amounts determined by the Trustee or provided for under this Deed.

15.3 *Debits*

- (a) The following amounts may be debited from the Reserve Account if the Act permits:
 - (i) any amounts to be credited to Member's Accounts by way of:
 - (A) additions to benefits otherwise payable; or
 - (B) satisfaction in whole or in part of any obligation of an Employer or Member to make contributions to the Fund;
 - (ii) amounts to be applied by way of payment to an Employer;
 - (iii) any negative investment earnings determined having regard to clause 7.5, the requirements of the Act, and any Investment Options; and
 - (iv) amounts to be applied in any other way that the Trustee considers appropriate.
- (b) If a Reserve Account relates to an Employer, the Employer's consent must be obtained to any application of assets under this clause 15.3.

OTHER MATTERS

16. *Confidentiality*

16.1 *Non-disclosure*

The Trustee will not disclose any confidential information regarding Beneficiaries or Employers acquired in the course of acting as trustee to other parties, except in connection with Members' interests in the Fund.

16.2 *Exceptions*

This clause 16 does not apply:

- (a) where the Trustee may be legally compelled to, or penalised for, failure to disclose such information;
- (b) to disclosures made to Employers or agents or delegates of the Trustee in connection with the operation of the Fund; or
- (c) where non-disclosure of the material may cause adverse tax consequences to the Fund.

17. *Termination of the Fund*

17.1 *General*

- (a) The Fund will be terminated upon the first to occur of the following:
 - (i) if the Trustee's office becomes vacant and no new Trustee is appointed within ninety (90) days;
 - (ii) if the Trustee resolves to terminate the Fund in accordance with clause 17.2; or
 - (iii) if the rule of law known as the rule against perpetuities applies to the Fund, on the expiration of the maximum period allowed under that rule for the duration of the trusts referred to in this Deed.
- (b) Where clause 17.1(a)(i) applies, references in clauses 17.3 and 17.4 to:
 - (i) the '**Trustee**' refer to any entity appointed after the ninety (90) day period referred to in clause 17.1(a)(i); and
 - (ii) the '**Closure Date**' refer to the date of expiry of the ninety (90) day period referred to in clause 17.1(a)(i).
- (c) Where clause 17.1(a)(iii) applies, references in clauses 17.3 and 17.4 to the '**Closure Date**' refer to the date on which the Fund terminates by law.

17.2 *Termination by Trustee*

The Trustee may resolve to terminate the Fund at any time. If it decides to do so the following provisions will apply:

- (a) the Members and Employers will be notified in accordance with the Act; and
- (b) the Trustee will determine a closure date ('**Closure Date**').

17.3 *No further receipts*

From the Closure Date no further contributions or transfers of amounts into the Fund may be accepted unless the Trustee specifically agrees (except for payment of any contributions arrears due at that date).

17.4 *Application of Assets*

Assets of the Fund will be applied in the following order on termination:

- (a) to provide for all Liabilities relating to the Fund, except for those relating to benefit payments;
- (b) to provide for benefits that became payable on or before the Closure Date including benefits that have begun to be paid in pension form;
- (c) in relation to Beneficiaries for whom benefits have not become payable under paragraph (b), and subject to this Deed, to provide for a benefit being an amount equal to the Member's Account Balance;
- (d) in the case of Employed Members, if the Employer agrees, to increase any benefits by application of amounts from the Reserve Account attributable to that Employer on a basis agreed between the Trustee and Employer;
- (e) subject to the Act, to pay an Employer any amounts from the Reserve Account attributable to that Employer on a basis agreed between the Trustee and Employer;

- (f) in the case of Members other than Employed Members in respect of whom a Reserve Account is maintained in the Fund, to increase any benefits by application of amounts from the Reserve Account on a basis determined by the Trustee; and
- (g) subject to the Act, to pay any amounts remaining to or for the benefit of one or more of the Members, former Members, or Employers as the Trustee considers appropriate.

18. Amendments

18.1 Power

Subject to this clause 18, the Trustee may amend any provision of this Deed (including this clause) at any time.

18.2 Method

An amendment must be made by deed.

18.3 Effective date

An amendment made under this clause will take effect from a date specified by the Trustee (whether before or after the date of the deed or resolution), or if none is specified, from the date of the deed or resolution.

18.4 Limitations

No amendment may be made that:

- (a) is inconsistent with the Act; or
- (b) would have the effect of reducing the amount of a benefit that has accrued or become payable by or in respect of the Member before the date of payment of the benefit, unless any such reduction:
 - (i) is required to meet a Tax liability in respect of the Fund;
 - (ii) is required to comply with the Act;
 - (iii) is approved in writing by the Member; or
 - (iv) is approved in writing by the Regulator.

19. Severance

If any provision of this Deed is wholly or partly invalid, that provision or the relevant part of the provision will be severed. The remainder of this Deed will have full force and effect unless severing the provision would be contrary to public policy or the Act.

20. Notices

20.1 Form

Any notice given under this Deed must be in writing.

20.2 Receipt

Notices will be deemed to have been given to the recipient if:

- (a) they are handed to them personally; or

- (b) they are sent by pre-paid post addressed to:
 - (i) in the case of Beneficiary, the person's last known address or place of employment; or
 - (ii) in the case of a Trustee or an Employer which is a corporation, its registered office or place of business; or
 - (iii) in the case of a Trustee or an Employer which is not a corporation, its place of business or other last known address.

20.3 *Timing*

Where service occurs by post, notice is deemed to have been given on the second business day after the date of posting. For this purpose a business day is any day other than a Saturday, Sunday or public holiday in the capital city of the State whose governing law applies.

21. *Governing law*

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia set out in the General Schedule.

SCHEDULE 1 – GENERAL SCHEDULE

1. *Name of Fund*
Kimgrats Super Fund.
2. *Name of Trustee*
Kimgrats Super Pty Ltd ACN 105 138 903.
3. *Governing law*
Tasmania.

SCHEDULE 2 – BENEFIT SCHEDULE

PART 1 – CONSTITUTIONAL CORPORATIONS

This Part 1 of the Benefit Schedule applies where the Trustee is a Constitutional Corporation in accordance with clause 3.2(a) of the Deed.

1. *Circumstances*

Subject to the Act and this Deed, benefits are payable in the following circumstances:

- (a) if the Member has reached the Retirement Age;
- (b) if the Member has ceased Service;
- (c) if the Member has died;
- (d) if the Member has become Totally and Permanently Disabled; or
- (e) if the Member has become Temporarily Disabled.

To avoid doubt, a benefit must be paid when required under the Act as provided by clause 12.5(a)(ii).

2. *Lump sum benefit upon receipt of a release authority*

- (a) Words and expressions used in this clause 2 have the meaning given to them in the Relevant Law.
- (b) Subject to the Relevant Law, where the Trustee receives a release authority or transitional release authority pursuant to and in accordance with the Relevant Law, the Trustee shall pay a lump sum benefit in respect of the Member equal to the lesser of:
 - (i) if the Member or the Commissioner of Taxation has requested payment of a certain amount, that amount;
 - (ii) the amount of excess contributions tax stated in the release authority or transitional release authority; or
 - (iii) the sum of the values of every superannuation interest (other than a defined benefit interest) held by the Trustee in the Fund.

3. *Calculation of benefits other than Pension Benefits*

3.1 *General*

Subject to this Deed, the amount of a Member's benefit will be:

- (a) in the case of an Employed Member the amount of the Member's Account Balance or, if the Employer Participation Terms have the effect that the Member is entitled to receive only a portion of the balance that is vested (**Vested Portion**) in the circumstances in which the benefit is payable, the Vested Portion plus any additional amount that the Employer may stipulate, but not exceeding the Member's Account Balance; and

(b) in the case of other Members, the amount of the Member's Account Balance.

3.2 *Temporary Disablement Benefit*

Rule 3.1 does not apply in the case of a benefit payable on the Member's Temporary Disablement. The benefit payable in those circumstances will be calculated having regard to:

- (a) the amount or amounts payable under the Policy in respect of the Member's Temporary Disablement;
- (b) the timing of those payments;
- (c) the liabilities incurred by the Trustee in connection with the Policy (including receipt and payment of proceeds); and
- (d) any relevant Policy terms.

4. *Pension Benefits*

4.1 *General*

Where a benefit in respect of a Member is to be payable in pension form, the amount referred to in Rule 4.2 will be applied for the purposes of providing that pension.

4.2 *Relevant amount*

For the purposes of Rule 4.1, the relevant amount is:

- (a) the amount that would be payable as a lump sum under Rule 3.1 if it applied; or
- (b) if the Member requests that only part of that amount be applied to fund the pension and the Trustee accepts that request, the amount of the part requested.

4.3 *Pension conditions*

The conditions applicable to payment of pension benefits appear in Part 3 of this Benefit Schedule.

PART 2 – OLD AGE PENSIONS

1. *Application*

Where clause 3.2(b) of the Deed applies, the main benefit payable from the Fund is an Old Age Pension payable at the Member's Retirement Age as described in Rule 2 of this Part 2 of the Benefit Schedule.

2. *Retirement pension*

If a benefit is payable to the Member on the Member's attaining Retirement Age, then subject to the Act, the benefit will be paid in the form of a pension on terms agreed between the Trustee and the Member, or in any absence of agreement, as determined by the Trustee. A Member to whom a pension benefit is payable as described above is entitled, subject to the Act, to commute part or all of that benefit to a lump sum on terms agreed between the Trustee and the Member, or in the absence of agreement as determined by the Trustee.

3. *Incidental benefits*

Where this Part 2 of the Benefit Schedule applies, subject to Rule 2, benefits will otherwise be payable in accordance with Part 1 and Part 3 of the Benefit Schedule, as relevant.

PART 3 – PROVISIONS APPLYING TO PENSION BENEFITS

1. *Forms of pension*

Without limiting anything in this Deed, the Trustee and a Beneficiary may agree that the whole or any part of any amount payable to a Beneficiary under this Deed will be paid in one or more of the following forms of pension if that is permitted by the Act and the terms of such a pension complies with any relevant provision of the *Superannuation Industry (Supervision) Regulations* (**'Regulations'**):

- (a) an Account-Based Pension;
- (b) a Transition to Retirement Pension; and
- (c) subject to the Act, any other form of pension that the Trustee chooses to make available at the relevant time.

Terms relating to each type of pension referred to in paragraphs (a) to (c) are provided in the subsequent Rules 5 and 6 of this Part 3 of this Benefit Schedule (**'Pension Clauses'**).

2. *Provisions of Act*

2.1 *Pension Clauses*

The Pension Clauses are designed to reflect certain provisions of the Act relating to pensions. To the extent that those provisions of the Act may be:

- (a) varied or supplemented, the Trustee may offer pensions on terms that are consistent with the varied or supplemented provisions; or
- (b) removed, the Trustee may adjust the features of pensions to which the Pension Clauses apply, having regard to the provisions that have been removed.

To avoid doubt, a reference to a provision of the Act includes part of a provision.

Subject to the Act, where a change of the type referred to in paragraphs (a) or (b) of this Rule 2 occurs, or if the Trustee otherwise considers it appropriate to do so, the Trustee may change the terms on which a current pension is paid, without being required to amend the terms of this Deed.

Terminology used in this Schedule which is not otherwise defined in this Deed has the same meaning as in the provisions of the Act relating to Pensions referred to above unless the context otherwise requires.

2.2 *Permitted Pensions*

For clarity, the Trustee may only pay one or more of the forms of pension referred to in Rule 1 of this Part 3 to the extent to which payment of such form of pension is permitted by the Act.

3. *Additional terms*

Subject to the Act, the Trustee is also permitted to:

- (a) pay pensions in any form permitted by the Act, which may include forms other than those described in the Pension Clauses;

- (b) make the payment of pensions, including those governed by the Pension Clauses, subject to any other terms that the Trustee considers appropriate. Those other terms may supplement or wholly or partly replace the terms that would otherwise apply. For example, the Trustee may, but is not obliged to, impose terms that it considers may enable the pension payments or the assets supporting those payments to be subject to concessional treatment under laws relating to tax or social security or similar entitlements; and
- (c) further document the terms governing any pension, including those governed by the Pension Clauses, in any manner it considers appropriate, whether by way of variation, supplement, qualification or deletion of terms that might otherwise apply.

4. *Terms*

Terms used in the Pension Clauses have the same meaning as in the Act (and in particular those provisions of the Act relating to pensions) unless the context otherwise requires.

5. *Account based pensions*

5.1 *Prohibition on further contributions*

- (a) Capital supporting the pension cannot be added to by way of contribution or rollover after the pension has commenced.

5.2 *Payments and amounts*

- (a) The pension must be paid annually, but pension payments may be made more frequently as the Trustee determines.
- (b) The total pension payments in a year may not be smaller than the minimum limits calculated in accordance with Schedule 7 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (**'SIS Regulations'**).
- (c) The pension will cease when the Account Balance is nil.

5.3 *Transfer and reversion rules*

- (a) The pension is transferable to another person only on the death of the primary beneficiary or reversionary beneficiary, as the case may be.
- (b) The Trustee may, upon application of the Member, determine that, on the death of a primary beneficiary or reversionary beneficiary, a pension may be paid to one or more reversionary beneficiaries.
- (c) Where a reversionary pension is payable, subject to compliance with these pension standards, the amount and terms and conditions of the reversionary pension will be agreed on between the reversionary pensioner concerned and the Trustee.
- (d) Notwithstanding any other provision of this Trust Deed, the pension can only be transferred:
 - (i) to a dependant of the primary beneficiary or reversionary beneficiary, as the case may be; and

- (ii) in the case of a child of the primary beneficiary or reversionary beneficiary, as the case may be:
 - (A) is less than 18 years of age;
 - (B) being 18 years of age or more, either was financially dependent on the primary beneficiary or reversionary beneficiary (as the case may be) and is less than 25 years of age, or has a disability as contemplated by the *Disability Services Act 1986* (Cth).

5.4 *Prohibition against borrowing*

- (a) The capital value of the pension and the income from it cannot be used as a security for a borrowing.

5.5 *Commutation of pension*

The pension cannot be commuted, in whole or in part, except in the following circumstances:

- (a) the commutation results from the death of the primary pensioner or reversionary pensioner;
- (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge;
 - (ii) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (iii) to meet the rights of a Member to return a financial product under the *Corporations Act 2001* (Cth);
- (c) for a commutation in part, the account balance of the pension immediately after the commutation, is at least equal to the minimum amount calculated in accordance with Schedule 7 of the SIS Regulations, as reduced by the amount of pension payments that have already been made to the primary beneficiary or reversionary beneficiary in the financial year in which the commutation occurs; or
- (d) the pension has paid, in the financial year in which the commutation takes place, at least the minimum amount required by the SIS Regulations.

6. *Transition to retirement income streams/transition to retirement pensions*

6.1 *Prohibition on further contributions*

- (a) Capital supporting the pension cannot be added to by way of contribution or rollover after the pension has commenced.

6.2 *Payments and amounts*

- (a) The pension must be paid annually, but pension payments may be made more frequently as the Trustee determines.
- (b) The total pension payments in a year may not be smaller than the minimum limits calculated in accordance with Schedule 7 of the SIS Regulations.
- (c) The total pension payments in a year may not be greater than the maximum limits calculated in accordance with the SIS Regulations.
- (d) The pension will cease when the Account Balance is nil.

6.3 *Transfer and reversion rules*

- (a) The pension is transferable to another person only on the death of the primary beneficiary or reversionary beneficiary, as the case may be.
- (b) The Trustee may, upon application of the Member, determine that, on the death of a primary beneficiary or reversionary beneficiary, a pension may be paid to one or more reversionary beneficiaries.
- (c) Where a reversionary pension is payable, subject to compliance with these pension standards, the amount and terms and conditions of the reversionary pension will be agreed on between the reversionary pensioner concerned and the Trustee.
- (d) Notwithstanding any other provision of this Trust Deed, the pension can only be transferred:
 - (i) to a dependant of the primary beneficiary or reversionary beneficiary, as the case may be; and
 - (ii) in the case of a child of the primary beneficiary or reversionary beneficiary, as the case may be:
 - (A) is less than 18 years of age;
 - (B) being 18 years of age or more, either was financially dependent on the primary beneficiary or reversionary beneficiary (as the case may be) and is less than 25 years of age, or has a disability as contemplated by the *Disability Services Act 1986* (Cth).

6.4 *Prohibition against borrowing*

- (a) The capital value of the pension and the income from it cannot be used as a security for a borrowing.

6.5 *Commutation of pension*

The pension may be commuted, in whole or in part. However, if the pension is commuted, the resulting lump sum amount cannot be cashed unless:

- (a) the purpose of the commutation is:
 - (i) to cash unrestricted non-preserved benefits;
 - (ii) to pay a superannuation contributions surcharge; or
 - (iii) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
- (b) before commutation, the primary beneficiary or reversionary beneficiary, as the case may be, has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'nil'.

7. *Particular arrangements*

Subject to the Act, the Trustee may:

- (a) require a Beneficiary requesting payment of a pension to provide the Trustee with information and other particulars relating to the pension before the pension begins to be paid and during the period of payment of the pension;

- (b) agree with the Beneficiary on particular arrangements to apply to the pension. For example, these may relate to the number and identity of any reversionary beneficiaries, the frequency of pension payments, the amount of pension payments, the treatment of benefits on the Beneficiary's death and any other relevant matters; and
- (c) set business rules in accordance with clause 4.1(d) of the Deed relating to default arrangements that may apply to pension payments, in the absence of agreement between the Trustee and Beneficiary, or relating to any other relevant matter.

8. Reserves

Subject to the Act, where it considers it appropriate, the Trustee may:

- (a) obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves in accordance with this Rule 8, or any other relevant matter;
- (b) establish pension reserves in relation to the funding of pension obligations relating to particular Beneficiaries;
- (c) arrange for amounts to be notionally credited or debited to pension reserves; and
- (d) where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the Beneficiary to whom the pension benefit related and that Beneficiary's Dependants.

9. Death Benefits

- (a) This Rule 9 applies if the terms of a particular pension as provided above, and taking into account any particular arrangements made in accordance with Rule 7, do not provide for the consequences for payment of the pension on the death of the pension recipient.
- (b) Where this Rule 9 applies, then unless the Trustee otherwise agrees, and subject to the Act, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with clause 12.6 of the Deed. For this purpose, references in clause 12.6 to the Member will be treated as references to the deceased pension recipient.

SCHEDULE 3 – APPLICATION FOR MEMBERSHIP

PART 1 – APPLICATION FOR MEMBERSHIP

Member details	
Name	_____
Address	_____
Date of birth	_____
Occupation	_____
Telephone	_____
Fax	_____
Amount of deposit (\$)	_____

Employer details	
Employer	_____
Address	_____

Application for membership, acknowledgments and authorisation

I hereby apply to become a member of [*insert name of fund*].

I acknowledge receipt of a current Product Disclosure Statement in respect of the Fund, supplied with this Application.

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

I hereby authorise the Trustee, in the event of my termination of employment, to transfer any benefit payable to me but which cannot be paid to me on my termination of employment (a preserved benefit), to a fund nominated by me in writing to the Trustee at the time of my termination of employment, or, if I fail to make such a nomination within 60 days of the date of my termination of employment, to the Fund.

Signed Dated

Tax file number information
Tax File No.

The Trustee of the superannuation fund is required to tell you the following things before you provide it with your tax file number. Your tax file number is confidential, and you should know the following things before you decide to provide it.

The trustee can collect your tax file number under the *Superannuation Industry (Supervision) Act 1993*.

If you do provide your tax file number to the trustee, it will only be used for legal purposes. This includes finding or identifying your superannuation benefits where other information is insufficient, calculating tax on any eligible termination payment you may be entitled to, and providing information to the Commissioner of Taxation. These purposes may change in the future.

If you provide your tax file number to the trustee, it may be provided to the trustee of any other superannuation fund to which your benefits are transferred in the future. The trustee will not pass your tax file number to any other fund if you inform it, in writing, that you do not want it to pass it on. The trustee may also give it to the Commissioner of Taxation. Otherwise, the trustee will treat it as confidential and comply with the provisions of the *Superannuation Industry (Supervision) Act 1993*, relevant taxation legislation and the *Privacy Act 1988 (Cth)* and the Privacy Policy for the Fund.

PART 2 – INDICATIVE DEATH BENEFIT NOMINATION FORM (NON-BINDING)

Member details	
Name	
Address	
Date of birth	
Occupation	
Telephone	
Fax	

Employer details	
Employer	
Address	

Nomination of Dependants

Important Information for Completion

1. This Nomination Notice is not binding. The Trustee will take it into account in the event that a benefit is paid from the Fund on your death. However, the Trustee/s have complete discretion as to which of your Dependants and/or Legal Personal Representative may receive the benefit and in what proportions. If there are no Dependants or Legal Personal Representative, the benefit may be payable to any other person.
2. This Nomination Notice must be fully completed in accordance with the details below:
 - Ensure both pages of this Notice are completed.
 - The Beneficiaries named in this Notice must be Dependants and/or your Legal Personal Representative.

Your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death.

Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.
 - For each person nominated, you must provide both his or her relationship to you and the proportion of any benefit that is to be paid to him or her.
3. If any of this information is not provided, then the Trustee may have to disregard your nomination.
4. It is not compulsory to complete this Notice, but it enables you to convey your wishes to the Trustee/s.

Name	Relationship to you	Proportion of benefit
<hr/>		
<hr/>		
<hr/>		
My Estate (legal personal representative)		
<hr/>		

Member declaration

I, _____ of _____ as a member of the Fund, request the Trustee/s to pay my death benefit to the above persons in the proportions shown.

I understand that:

- in the event of my death, the Trustee/s have complete discretion as to which of my dependants and/or estate will receive any death benefit payable.
- this Notice revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries.

Signed Dated

PART 3 – BINDING DEATH BENEFIT NOMINATION

Member details	
Name	
Address	
Date of birth	
Occupation	
Telephone	
Fax	

Employer details	
Employer	
Address	

Binding Death Benefit Nomination

Information about Binding Directions

The operation of the Fund, of which you are a member or are being invited to be a member, is governed by a document called a Trust Deed. The Trustee of the Fund is bound to act in accordance with the requirements of the Trust Deed in administering the Fund.

Under the Trust Deed, the Trustee has a discretion to decide whether, in the event of your death, to pay the death benefit, which is payable to your estate or to dependants of yours, and, in what proportions.

However, the Trust Deed also enables you to override the Trustee's discretion by you giving a binding direction to the Trustee. This is a direction to the Trustee to pay any death benefit payable either to your estate or to dependants specified by you and in the proportions that you specify.

You may either elect for the Trustee to exercise the discretion given to it to decide who to pay your benefit to, in the event of your death, or you can give a binding direction to the Trustee by completing the direction in this Nomination.

Important points about Binding Directions

If you decide to give a binding direction by completing this Nomination, it is important for you to note the following:

1. You can only direct the Trustee to pay the benefit either to your estate or to the dependants that you specify on this Nomination (or both).
2. If you wish to give such a direction to the Trustee, you must specify the percentage of your total death benefit which is to be paid to each of the estate of your dependants.
3. You can confirm, amend or revoke this Nomination at any time by giving written notice to the Trustee.
4. This nomination is binding on the Trustee until it is amended or revoked. If the nomination is revoked, the Trustee will have a discretion to decide who to pay the death benefit to.

5. If, on this Nomination, you direct the Trustee to pay any part of your death benefit to a person who is not a dependant (as described below), your direction will be void and of no effect and the Trustee will be required to decide who to pay your death benefit to.
6. For the purposes of the Trust Deed, a dependant is:
 - a spouse of a Member
 - any children of a Member
 - any other person (whether related to the Member or not) who is financially dependent on the Member

'Spouse' includes a de facto spouse and 'children' includes step-children, adopted and ex-nuptial children.

If you have any doubt as to whether a person you wish to nominate to receive any part of your death benefit is a dependant, you should seek advice from the Trustee before completing this Nomination.

7. For this Nomination to be effective, the Trustee has determined that it must be signed and dated by you in the presence of 2 witnesses who are both at least 18 years old and neither of the witnesses can be a person who you have nominated to receive a part of your death benefit.

Important Information for Completion

1. In order for this Nomination Notice to be valid, it must be with the details below:
 - Ensure the Nomination, Member Declaration and Witness Declaration are completed.
 - The Beneficiaries named in this Nomination must be Dependants and/or your Legal Personal Representative.

As mentioned above, your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death.

Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who applies for and has been granted letters of administration for your estate.

Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.
 - For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.
 - The Nomination must be signed and dated by you in the presence of two witnesses aged 18 years or over. Both witnesses must also provide their date of birth, sign and date the Nomination. It is important to note that the witnesses cannot be persons nominated as beneficiaries.
2. If any of this information is not provided, then your Nomination may be invalid. The Trustee will contact you for clarification if this is the case.
3. It is not compulsory to complete this Nomination. Details of who a death benefit will be paid to in the situation where there is no valid Nomination, can be found in the Member information document or Product Disclosure Statement.

Nomination of Dependants

Name	Relationship to you	Proportion of benefit
Total allocation		100%

Member declaration

I, _____ of _____ as a member of the Fund, direct the Trustees to pay my death benefit to the above persons in the proportions shown, above.

I understand:

- I can amend or revoke this Nomination at any time by providing a new Nomination to the Trustee of the Fund, signed and dated by myself in the presence of two witnesses who are aged 18 years or over.
- This Nomination is binding on the Trustee until it is amended or revoked.
- This Nomination revokes and amends any previous notice supplied to the Trustee of the Fund in regard to my nominated beneficiaries.
- If this Nomination is not correctly completed, it may be invalid.
- If I have nominated persons who are not "dependants" as explained above, the direction contained in the Nomination, will be void and of no effect and the Trustee will have a discretion as to when the benefit is payable and in what proportion.

I acknowledge that I have been provided with information by the Trustee of the Fund that enables me to understand my rights to direct the Trustee to pay my Death Benefit in accordance with this Nomination.

Signed Dated

Witness declaration

We declare that:

- this Nomination was signed by the member in our presence;
- we are aged 18 or more; and
- we are not named as beneficiaries of the Fund.

Signed Dated

Name (print)

Signed Dated

Name (print)

SCHEDULE 4 – EMPLOYER PARTICIPATION AGREEMENT

To: The trustee of [*insert name of fund*] (**'Trustee'**)

The Employer named below applies to participate in the Fund and to contribute in respect of some or all of its employees as Members and acknowledges receipt of a current Product Disclosure Statement in respect of the Fund, supplied with this Application.

The Employer agrees that if admitted to participate in the Fund it will:

- (a) observe and comply with all obligations placed on an employer under the Trust Deed governing the Fund as amended from time to time (**'Trust Deed'**); and
- (b) otherwise be bound by the terms of the Trust deed as if it had been named as a party to it.

The Employer agrees that written acknowledgment by the Trustee, or acceptance of a contribution by the Employer to the Fund, will constitute acceptance of this application from the date that it is executed unless another date is specified by the Trustee.

Name of Employer

Address of Employer

Dated this day of 200

Signed for and on behalf of

_____ in the presence of

Signature of witness



Signature of officer



Name of witness (print)

Name of officer (print)

SIGNING PAGE


EXECUTED as a deed.

Executed as a deed by Kimgrats Super Pty Ltd pursuant to a resolution of the board and pursuant to s127 of the Corporations Act by signing by two directors

Signature of witness

Name of witness (print)

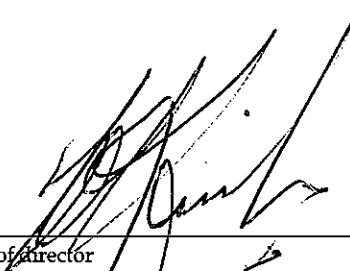
Executed by Kimgrats Super Pty Ltd in accordance with Section 127 of the *Corporations Act 2001* by signing by two directors in the presence of



Signature of director


Name of director (print) Gary Grant





Signature of director

Name of director (print) Phillip Kimber


Maria Graham
Law Clerk
20 Murray St, Hobart