

DATED 28/2/2016 .20

HARDING SUPER PTY LTD
ACN 149 905 304

"the Trustee"

DEED OF AMENDMENT FOR HARDING SUPERANNUATION FUND

N.PANOS & ASSOCIATES
Solicitors
Unit 10, 83 George Street
Parramatta NSW 2150
Tel: 9687 3755
Fax: 9687 3750

THIS DEED OF AMENDMENT is made on the _____ day of _____, 20__.

BY **HARDING SUPER PTY LTD ACN 149 905 304** a company incorporated in the state of New South Wales and having its registered office situated at Unit 8, 3 Blackwall Point Road, Abbotsford, NSW, 2046

"the Trustee"

RECITALS:

- A. By deed dated 7 April, 2011 an indefinitely continuing superannuation fund known by the name Harding Superannuation Fund was established ("the Trust Deed"). The reference to the "Trust Deed" includes the Rules attached to the Trust Deed.
- B. The Trustee is the present trustee of Harding Superannuation Fund ("the Fund") and is a Constitutional Corporation as defined in the Superannuation Industry (Supervision) Act 1993 ("the SIS Act").
- C. The Trustee is empowered to amend the Trust Deed subject to limitations therein expressed.
- D. The Trustee proposes to amend the Trust Deed in order to reflect current superannuation rules and to ensure maximum flexibility within the requirements of the Superannuation Industry (Supervision) Act 1993 and related legislation and regulations and is satisfied that the proposed amendment is admissible in terms of the amendment power.
- E. The existing members of the Fund consent to the amendment of the Trust Deed.

NOW THIS DEED WITNESSES as follows:

- 1. In accordance with the Trustee's power to amend, the Trustee hereby amends the Trust Deed by the deletion of all the provisions forming part of the Trust Deed and the substitution of the Rules and Schedules attached to this Deed of Amendment.
- 2. The amendment referred to in clause 1 shall be taken as having effect as from the date hereof.
- 3. The Trustee hereby declares that the amendment referred to in clause 1 does not prejudicially vary or affect the benefits already accrued to any member of the Fund.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals on the day and year hereinbefore mentioned.

Executed by
HARDING SUPER PTY LTD
in accordance with Section 127 of the Corporations Act
as trustee for the Harding Superannuation Fund
by Mark Harding a director and
by Sue Ellen Harding a director

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)
)
)
)
)
Mark Harding
Director - Mark Harding

S. Harding
Director - Sue Ellen Harding

The members listed below hereby consent to the amendment referred to in clause 1.

SIGNED SEALED AND DELIVERED
by the said **MARK HARDING**
in the presence of:

)
)
)
Mark Harding
Mark Harding

John Stephen Moore
Signature of Witness
John Stephen Moore
Print Name of Witness in full

SIGNED SEALED AND DELIVERED
by the said **SUE ELLEN HARDING**
in the presence of:

)
)
)
Sue Ellen Harding
Sue Ellen Harding

Margaret R. Velkou
Signature of Witness
MARGARET R. VELKOV
Print Name of Witness in full

RULES

1 DEFINITIONS AND INTERPRETATION

1.1 The following words and expressions have these meanings in the Deed and these Rules unless the contrary intention appears:

- 1.1.1 "**Accumulated Credit**" of a Member means the balance of the Contribution Account of the Member;
- 1.1.2 "**Act**" means the Income Tax Assessment Act 1936 and/or the Income Tax Assessment Act 1997 as amended;
- 1.1.3 "**Approved Fund**" means:
- (a) an approved deposit fund as defined in SIS; or
 - (b) a Complying Superannuation Fund;
- 1.1.4 "**Auditor**" means such person who in relation to the Fund satisfies such minimum standards as are prescribed in SIS in respect of persons who may be auditors to superannuation funds and who has been appointed by the Trustee and has accepted the position of Auditor of the Fund;
- 1.1.5 "**Benefit**" means any benefit which is or may become payable under these Rules in respect of a Member;
- 1.1.6 "**Binding Death Benefit Nomination Notice**" means a direction which is a binding direction for the purposes of the Relevant Requirements as to the payment of a Member's Death Benefit and which complies with the Rules and the Relevant Requirements. However, if a member nominates that the Member's notice shall remain valid for a period of time greater than three (3) years, then such notice need not comply with Regulation 6.17A(7) of the Superannuation Industry (Supervision) Regulations 1994;
- 1.1.7 "**Business Day**" means a day on which trading banks are open for business in Sydney;
- 1.1.8 "**Child**" includes an adopted child, a step-child or an ex-nuptial child;
- 1.1.9 "**Child Contribution**" means a gross payment to the Fund made as a contribution on behalf of a Member by a parent, grandparent or other relative of the Member, and is permitted by the Relevant Requirements;
- 1.1.10 "**Commencement Date**" means the date the Fund came into operation in accordance with the original deed establishing the Fund;
- 1.1.11 "**Complying Superannuation Fund**" has the same meaning as Section 42 of the SIS Act.
- 1.1.12 "**Concerned Person**" means a person who:
- (i) is, or was within 12 months prior to a request for information, a Member of the Fund;
- or

- (ii) has a beneficial interest in the Fund;
- 1.1.13 **"Constitutional Corporation"** means a trading corporation or financial corporation formed within the limits of the Commonwealth of Australia within the meaning of the Australian Constitution;
- 1.1.14 **"Contribution Account"** of a Member means the account kept under Rule 7.6 and Rule 7.7;
- 1.1.15 **"Death Benefit"** means a Benefit so designated in these Rules;
- 1.1.16 **"Death Benefit Nomination Notice"** means a Non-Binding Death Benefit Nomination Notice or a Binding Death Benefit Nomination Notice;
- 1.1.17 **"Deed"** means the Deed to which these Rules are attached as amended;
- 1.1.18 **"Dependant"** means in respect of a Member (whether living or deceased) any of the following persons:
 - (a) the spouse, widow or widower of the Member;
 - (b) a child of the Member including a child of the Member born after the death of the Member;
 - (c) a person who in the opinion of the Trustee is at the relevant time (or in the case of a deceased Member, was at the time of death of that Member) wholly or partially dependent on the Member for that person's maintenance and support or who has or had at the relevant time a legal right to maintenance and support from that Member;
 - (d) a person who is, or was at the time of the death of the Member, in an interdependency relationship with the Member as defined in the Relevant Requirements; and
 - (e) a person who is a dependant as defined by the Relevant Requirements;
- 1.1.19 **"Distribution Date"** means a date determined by the Trustee under rule 7.9 for the declaration of a Fund Earning Rate;
- 1.1.20 **"Eligible Person"** is a person who satisfies such minimum criteria (if any) pursuant to SIS as would allow that person to be a Member of the Fund of which Membership would not cause the Fund to fail to be a Complying Superannuation Fund.
- 1.1.21 **"Financial Year"** means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund;
- 1.1.22 **"Fund"** means the entire superannuation fund as constituted by the Deed and these Rules;
- 1.1.23 **"Fund Earning Rate"** means the rate from time to time determined under rule 7.10;
- 1.1.24 **"Gainfully Employed"** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment and includes:
 - (a) "full-time" if gainfully employed for at least 30 hours each week;
 - (b) "part time" if gainfully employed for at least 10 hours and less than 30 hours each week; or
 - (c) "part-time basis during a Financial Year" if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year; and

- (d) any other meaning of "Gainfully Employed" under the Relevant Requirements.
- 1.1.25 **"Investment Fluctuation Reserve"** means an account maintained under rule 7.15;
- 1.1.26 **"Legal Personal Representative"** in relation to a person means the executor of the will or administrator of the estate of the deceased person, the trustee of the estate of the person under a legal disability or a person who holds an enduring power of attorney granted by the person.
- 1.1.27 **"Manager"** means a person appointed under rule 9.7;
- 1.1.28 **"Member"** means a person who has been admitted to membership of the Fund under Rule 2 and has not ceased to be a Member under Rule 2.5;
- 1.1.29 **"Nominated Beneficiary"** means a person nominated in writing by a Member as the desired recipient of a Benefit that is or becomes payable following the death of that Member, and includes a person nominated in a Death Benefit Nomination Notice made under these Rules or a person nominated under any other circumstances.
- 1.1.30 **"Non-Binding Death Benefit Nomination Notice"** means a direction which is not a Binding Death Benefit Nomination Notice as to the payment of a Member's Death Benefit;
- 1.1.31 **"Normal Retirement Date"** of a Member means the day on which the Member reaches the age of sixty five (65);
- 1.1.32 **"Old-Age Pension"** means an old-age pension as defined by the Relevant Requirements and paragraph 51(xxii) of the Constitution of the Commonwealth of Australia;
- 1.1.33 **"Pension"** means a Benefit that is provided by the Fund as a pension, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and includes an account-based pension, a transition to retirement income stream or any other pension as defined by the Relevant Requirements;
- 1.1.34 **"Pension Account"** means a pension account established under these Rules;
- 1.1.35 **"Pensioner"** means a Member who is in receipt of a Pension;
- 1.1.36 **"Prescribed Event"** means a condition of release or other event being satisfied in relation to a Member that entitles the Trustee to pay all or part of a Benefit to or in respect of the Member without contravening the Relevant Requirements;
- 1.1.37 **"Reasonable Benefit Limits"** means the limits imposed by the Commonwealth Government or a Responsible Authority on the amount of retirement benefits which are subject to concessional taxation treatment, and includes any announced proposals to alter those limits which the Trustee believes will have retrospective effect;
- 1.1.38 **"Related Party"**, of the Fund, has the same meaning as set out in Section 10 of the SIS Act;
- 1.1.39 **"Related Trust"**, of the Fund, has the same meaning as set out in Section 10 of the SIS Act;
- 1.1.40 **"Relevant Requirements"** means any requirements imposed under SIS or any other law of the Commonwealth of Australia or State or Territory of Australia (including, where applicable, any declaration, determination, ruling or guideline made by any Responsible

Authority) with which the Fund or the Trustee must comply in order to obtain and maintain the maximum concessional taxation treatment or any other concession in respect of the Fund or that relates to superannuation or any Benefit provided under this Deed and these Rules;

- 1.1.41 **"Required Payment Date"** means any date at which a Member's Benefit must be paid or commence to be paid under the Relevant Requirements;
- 1.1.42 **"Reserve Account"** means the account kept under rule 7.17;
- 1.1.43 **"Responsible Authority"** means as the case may require, any one or more of the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office, the Commissioner of Taxation or any other governmental authority responsible for administering the laws, regulations or any other rules governing the operation of or the availability of income tax concessions to or in respect of superannuation funds;
- 1.1.44 **"Significant Event"** means:
- (a) any event in relation to the Fund that the Trustee reasonably believes a Member would expect to be informed of;
 - (b) a change in the Rules of the Fund which have an adverse effect on members' benefits, entitlements, benefit payments, calculation of benefit payments, or the security of Members' benefits;
 - (c) if a Member is transferred to a different category of membership or different fund;
 - (d) if the Trustee receives a notice from the Responsible Authority that the Fund fails to be a Complying Superannuation Fund then, the Trustee must provide the Members with:
 - (i) a statement of the circumstances of the issue of the notice;
 - (ii) the effect the notice has on the taxation position of the Fund;
 - (iii) details of the action the Trustee has taken to become a Complying Superannuation Fund; and
 - (iv) any other information the Responsible Authority requires must be given to Members.
- 1.1.45 **"SIS"** means the SIS Act and the Regulations made thereunder as amended from time to time.
- 1.1.46 **"SIS Act"** means the Superannuation Industry (Supervision) Act 1993 as amended from time to time;
- 1.1.47 **"Spouse"** of a Member means a husband, wife, a person who, although not legally married to the Member, lives with the Member on a bona fide domestic basis as the husband or wife of the Member or any other form of spouse recognised by the Relevant Requirements;

- 1.1.48 **"Spouse Contribution"** means a gross payment made to the Fund as an eligible spouse contribution on behalf of a Member by a Spouse of that Member as permitted by the Relevant Requirements;
- 1.1.49 **"Telephone"** means telephone or other means of instantaneous audible communication;
- 1.1.50 **"Temporary Incapacity"** in relation to a Member:
- (a) who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental), that caused the Member to cease to be Gainfully Employed but does not constitute Total and Permanent Disablement; or
 - (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term "Temporary Incapacity" (or the term "Temporary Disability" or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
 - (c) means temporary incapacity as defined in the Relevant Requirements;
- and **"Temporarily Incapacitated"** has a corresponding meaning;
- 1.1.51 **"Total and Permanent Disablement"** of a Member means that the Member is certified, by two (2) registered medical practitioners approved by the Trustee, to have become incapacitated through illness, accident or injury to an extent which renders the Member unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education, training or experience;
- 1.1.52 **"Trustee"** means the party named as the trustee in the Deed or any person who subsequently assumes the role of the trustee under the Deed and these Rules; and
- 1.1.53 **"Unallocated Contributions Account"** means the account kept under rule 7.23.
- 1.2 In the Deed and these Rules unless the contrary intention appears:
- 1.2.1 a reference to the Deed or these Rules or any other instrument includes any variation or replacement of any of them;
 - 1.2.2 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - 1.2.3 the singular includes the plural and vice versa;
 - 1.2.4 words importing a gender include any other gender;
 - 1.2.5 the word "amend" includes delete or replace;
 - 1.2.6 the word "including" when introducing a list of items does not exclude a reference to other items of the same class;
 - 1.2.7 the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
 - 1.2.8 the word "tax" includes any duty or governmental impost;

- 1.2.9 a power to appoint includes a power to vary or cancel the appointment; and
- 1.2.10 if any term defined in the Relevant Requirements is used in the Deed or these Rules and is not defined therein it will, unless the context otherwise requires, have the same meaning as in the Relevant Requirements as appropriate.

1.3 Headings are inserted for convenience and do not affect the interpretation of these Rules.

2 **ELIGIBILITY AND MEMBERSHIP**

2.1 **Eligibility**

A person is eligible to become a Member if:

- (a) the Trustee invites the person; and
- (b) the person applies for membership of the Fund within the time specified in the invitation in the form set out in Schedule 1 or in such other form as approved by the Trustee.

2.2 **Membership**

2.2.1 Before admitting a person as a Member, the Trustee may require the person:

- (a) to have a medical examination; and
- (b) to provide information which the Trustee considers relevant to the administration of the Fund.

2.2.2 The Trustee may;

- (a) reject an application for membership; or
- (b) impose special conditions when accepting an application for membership.

2.2.3 A person becomes a Member on the date when the Trustee has approved the person's application in the form set out in Schedule 2 or such other form approved by the Trustee.

2.2.4 The Trustee and the Member may agree that the Member is to be regarded as having become a Member on an earlier date.

2.2.5 The person on becoming a Member agrees to be bound by the Deed and these Rules.

2.2.6 Subject to the Relevant Requirements, the person upon becoming a Member:

- (a) Must consent to becoming a trustee of the Fund or a director of a company trustee of the Fund;
- (b) becomes a trustee of the Fund or a director of the Fund on the date his or her membership commences.

2.3 **Transfer from another Fund**

The Trustee may make arrangements it considers appropriate with:

- (a) a Member;
 - (b) any previous employer of the Member; or
 - (c) the trustees of any superannuation fund of which the Member has been a member,
- to transfer assets to the Fund and to provide Benefits in respect of the Member, which may be calculated in a different manner than set out in these Rules. The arrangement must be consistent with the Relevant Requirements.

2.4 **Transfer to another Fund**

2.4.1 If a Member becomes eligible to join another superannuation fund and requests in writing the Trustee to transfer assets to the other fund, the Trustee may do so. However, the Trustee must not transfer more than the Member's Accumulated Credit or more than is requested by the Member and the transfer must comply with the Relevant Requirements.

2.4.2 A transfer under Rule 2.4.1 satisfies the Member's entitlement to any Benefit in respect of the amount transferred and the Trustee may declare that the transfer satisfies the Member's entitlement in full. The Trustee is not responsible for the manner in which the trustee of the other fund deals with the amount transferred.

2.5 **Cessation of Membership**

A person ceases to be a Member when:

- (a) all Benefits which are or may be payable in respect of the Member have been paid; or
- (b) a transfer is made under Rule 2.4.1 in satisfaction of all the Member's entitlement to Benefits; or
- (c) all the Member's entitlement to Benefits is terminated.

2.6 **Member's Records**

The Trustee must establish and maintain records in respect of Members as the Trustee is required by the Responsible Authority and the Relevant Requirements. Such records must contain matters as required by the Responsible Authority and the Relevant Requirements as to ensure the Fund is a Complying Superannuation Fund.

3 **CONTRIBUTIONS**

3.1 **Member Contributions**

A Member may contribute any amount or have contributions made on the Member's behalf if the Trustee agrees.

3.2 **Employer Contributions**

An employer of a Member may contribute any amount for the Member if the Trustee agrees.

3.3 **Government Contributions**

The Trustee may accept contributions made by the Government for a Member.

3.4 **Other Contributions**

The Trustee may accept any other contributions to the Fund made by or in respect of a Member, including any Child Contribution, Spouse Contribution or contributions arising from the disposal of small business assets that qualify for the CGT small business 15-year exemption or retirement exemption as long as the contribution is permitted by the Relevant Requirements.

3.5 **Contributions - General**

The Trustee may refuse to accept all or part of a contribution from a person without giving any reason.

- 3.6 A Member does not have any obligation to make a contribution to the Fund and may remain a Member of the Fund even if a contribution is not made by or in respect of that Member.
- 3.7 The Trustee must not accept contributions contrary to the Relevant Requirements.
- 3.8 If the Trustee finds that any contributions have been accepted contrary to the Relevant Requirements, the Trustee must repay them to the contributor, less any charge which the Trustee may make for any insurance effected or other expenses incurred in relation to the contributions.
- 3.9 Any contributions made by anyone who is permitted to make contribution under these Rules shall be made to the Trustee either in cash or by in specie transfer of an asset or assets PROVIDED THAT the assets transferred must be authorised investments as set out in these Rules and in accordance with the Fund's investment strategy PROVIDED that any transfer of an asset under this Rule shall be made upon the terms and conditions specified under the Relevant Requirements, and shall not be made if the Trustee or an agent or delegate of the Trustee is prohibited by the Relevant Requirements from acquiring the asset.

3.10 **Splitting Contributions**

After the end of each Financial Year, the Trustee may allow a Member to request the Trustee to split the contributions made in respect of that Member in the previous year, with the split amount transferred to the benefit of the Member's Spouse, as long as the contribution split is made in a manner and form that is permitted by the Relevant Requirements.

4 1 **BENEFIT ENTITLEMENT**

4.1 **Retirement Benefits**

- 4.1.1 A Member is entitled to receive from the Fund a Retirement Benefit equal to the Accumulated Credit when:
- (a) in the case of a Member who has reached a Preservation Age that is less than 60 – if:
 - (i) an arrangement under which the Member was Gainfully Employed has come to an end; and
 - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a full-time or part-time basis; or
 - (b) in the case of a Member who has attained age 60 – an arrangement under which the Member was Gainfully Employed has come to an end on or after the Member attained that age; or
 - (c) the Member satisfies the Relevant Requirements for the payment of a Benefit upon retirement notwithstanding that the Member may otherwise continue in Gainful Employment.
- 4.1.2 Subject to the Relevant Requirements, the Member may elect to receive the Retirement Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as any one or more of those forms. If the Member does not make the election, then the Benefit will be paid as a Pension.

4.2 Preservation Age Benefits

4.2.1 A Member is entitled to receive from the Fund a Preservation Age Benefit when the Member attains the Member's Preservation Age without needing to retire.

4.2.2 The Preservation Age Benefit will be the amount determined by the Trustee subject to the Relevant Requirements but must not exceed the balance of the Member's Accumulation Credit.

4.2.3 Subject to the Relevant Requirements, the Member may elect to receive the Preservation Age Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as any one or more of those forms. If the Member does not make an election, then the Benefit will be paid as a Pension.

4.3 Total and Permanent Disablement Benefits

4.3.1 A Member who retires because of Total and Permanent Disablement is entitled to a Benefit equal to the Accumulated Credit.

4.3.2 Subject to the Relevant Requirements, the Member may elect to receive the Total and Permanent Disablement Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as one or more of those forms. If the Member does not make the election, then the Benefit will be paid as a Pension.

4.3.3 If a Member is incapable of making an election under this clause, the election may be made on behalf of the Member by the Member's legally appointed attorney or guardian.

4.4 Temporary Incapacity Benefits

4.4.1 A Member is entitled to receive from the Fund a Temporary Incapacity Benefit equal to the Accumulated Credit if the Member suffers Temporary Incapacity.

4.4.2 Notwithstanding any other clause, a Temporary Incapacity Benefit must be paid to a Member in the form and in a manner that is required or permitted by the Relevant Requirements.

4.5 Death Benefits

4.5.1 On the death of a Member the Trustee must pay a Death Benefit equal to the Accumulated Credit.

4.5.2 Subject to the Relevant Requirements and Rules 6.6 to 6.11, a Death Benefit may be paid in a manner that the Trustee determines in its discretion in the form of a Pension, the purchase of an Annuity or a lump sum or any one or more of those forms.

4.6 Other Benefit Payments

A Member is entitled to receive, and to request payment of, any other Benefit that the Trustee is permitted by the Relevant Requirements to pay to the Member upon the Member satisfying a Prescribed Event, including benefits on account of:

- (a) the Members being a temporary resident permanently departing Australia;
- (b) the Member suffering severe financial hardship; or
- (c) compassionate grounds.

The amount of the Benefit and the manner in which it is to be paid to the Member must be determined by the Trustee subject to the Relevant Requirements.

4.7 **Voluntary Deferral**

A Member who is entitled to a Benefit may ask the Trustee to defer payment of all or part of it. The Trustee may, but need not, comply with the request if the Relevant Requirements permit.

4.8 **Compulsory Preservation**

If the Trustee considers it necessary under the Relevant Requirements to preserve any part of a Benefit, then the Trustee must:

- (a) pay that part of the Benefit to a fund or organisation nominated by the Member, which also preserves it under the Relevant Requirements; or
- (b) pay it to a fund or organisation nominated by the Trustee if the Member does not make a request and the Relevant Requirements permit; or
- (c) retain it in the Fund until it may be paid under the Relevant Requirements.

4.9 **Retained Benefits**

Any part of a Benefit retained under rule 4.7 or 4.8 remains credited to the appropriate Contribution Account until payment and the Trustee must adjust the amount of the Benefit on the basis of further credits and debits recorded in the Account. If the Member dies before the Benefit is paid in full then the Trustee must pay the remainder of the Benefit as a Death Benefit.

4.10 **Required Payment Date**

If a Member has not retired from the workforce but reaches the Required Payment Date the Trustee must pay the Member the Accumulated Credit, or apply it to purchase an annuity.

4.11 **Trustee Determinations**

A Benefit is only payable if these Rules permit it.

4.12 The Trustee may act on any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions.

4.13 **Interest**

The Trustee may credit or debit interest at a rate it considers appropriate to a Benefit which is paid within one (1) month after the date it becomes payable. However, the Trustee is not required to do so.

4.14 The Trustee must credit or debit interest at a rate it considers appropriate to a Benefit which is not paid within one (1) month after the date it becomes payable.

5 **RESTRICTIONS ON BENEFIT ENTITLEMENT**

5.1 **Forfeiture**

The Trustee may forfeit any Benefit which has yet to become payable and which is the subject of an order or agreement (other than under the Family Law Act), in favour of a person other than the Member.

5.2 The Trustee must apply a forfeited benefit for one or more of the Member and the Member's Dependants as the Trustee considers appropriate.

5.3 The Trustee must apply a forfeited Benefit for one or more of the Member and the Member's Dependants as the Trustee considers appropriate and the Relevant Requirements permit.

5.4 The Trustee must not recognise any purported assignment of a Benefit, other than under the Family Law Act.

6 PAYMENT OF BENEFITS

6.1 Purchase of Annuity

If a Member entitled to a Benefit requests in writing the Trustee to apply all or part of it to purchase an annuity in the name of the Member, or of the Member and one or more Dependants, and the purchase complies with the Relevant Requirements, then the Trustee may comply with the request if permitted by the Relevant Requirements.

6.2 Payment to Approved Fund

If a person entitled to a Benefit requests in writing the Trustee to pay all or part of it to an Approved Fund, and the payment complies with the Relevant Requirements, then the Trustee may comply with the request if permitted by the Relevant Requirements.

6.3 The Trustee may pay all or part of a Benefit to an Approved Fund without the consent of the person entitled to it.

6.4 Unclaimed Benefits

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

- (a) treat as unclaimed money; or
- (b) require to be transferred to another fund.

6.5 Death Benefits

Subject to rules 6.6 to 6.11, the Trustee must pay a Member's Death Benefit to one or more of the Member's:

- (a) Dependants; and
- (b) Legal Personal Representative;

in proportions which the Trustee decides. Subject to the Relevant Requirements and Rules 6.6 to 6.11, the Trustee may pay a Member's Death Benefit as a lump sum, pension or annuity, or in any other form, as the Trustee considers appropriate.

6.6 Death Benefit Nomination

A Member may give the Trustee a Death Benefit Nomination Notice in the form approved by the Trustee stating:

- (a) the form in which the Member's Death Benefit is to be paid including, if appropriate, the extent to which it is paid as one or more lump sums, pensions, annuities or any of these; and
- (b) those of the Member's Dependants and Legal Personal Representative to whom the Member's Death Benefit is to be paid.

- 6.7 For the purposes of Rule 6.6, the following provisions apply:
- (a) Subject to the Relevant Requirements, a Member may vary a Death Benefit Nomination Notice or give a new Death Benefit Nomination Notice at any time;
 - (b) The Trustee may disregard any Death Benefit Nomination Notice if it does not comply with any formal requirements set by the Trustee and the Rules.
 - (c) A Death Benefit Nomination Notice shall remain valid for such period of time (including indefinitely) as the relevant Member giving the Death Benefit Nomination Notice specifies in the Death Benefit Nomination Notice provided however that, where no period is so specified, the Death Benefit Nomination Notice shall be valid for a period of three (3) years from the date it is first signed or last confirmed;

6.8 Binding Death Benefit Nomination

If, at the time of a Member's death, the Trustee holds a Binding Death Benefit Nomination Notice in respect of the Member under rule 6.6 or 6.7, the Trustee must pay so much of the Member's Death Benefit as is validly covered by the Binding Death Benefit Nomination Notice, in accordance with the Binding Death Benefit Nomination Notice.

- 6.9 If, at the time of a Member's death, the Trustee holds a Binding Death Benefit Nomination Notice in respect of the Member under rule 6.6 or 6.7 and the Binding Death Benefit Nomination Notice does not cover the whole of the Member's Death Benefit, the Trustee must pay so much of the Member's Death Benefit as is not covered by the Binding Death Benefit Nomination Notice to the one or more of the Member's Dependents and Legal Personal Representative.

6.10 Non-Binding Death Benefit Nomination

If at the time of a Member's death, the Trustee holds a Non-Binding Death Benefit Nomination Notice in respect of the Member under rule 6.6 or 6.7, the Non-Binding Death Benefit Nomination Notice is for information only and does not limit the Trustee's discretion on the payment of the Death Benefit.

- 6.11 If all or any part of a Member's Death Benefit cannot be paid under rule 6.8, 6.9 or 6.10, the Trustee may pay the benefit in proportions that the Trustee decides and subject to the Relevant Requirements, as a lump sum, pension or annuity or in any other form as the Trustee considers appropriate.

6.12 Transfer of Assets

At the written request of a person entitled to a Benefit the Trustee may pay the Benefit by transferring assets of equivalent value to the person or the person's nominee.

6.13 Trustee's Discharge

The Trustee is discharged from all obligations in respect of a Benefit if the Trustee pays it in good faith to or on behalf of a person the Trustee believes to be entitled to it.

6.14 Financial Incapacity

If the Trustee believes that a person who is entitled to a Benefit is unable to manage their financial affairs, and the Relevant Requirements permit, the Trustee may:

- (a) pay the Benefit to another person to be used for the advantage of the person entitled to it; and
- (b) accept the other person's receipt as a good discharge.

The Trustee is not responsible for the application of the Benefit by the person to whom it is paid.

6.15 **Tax**

The Trustee may deduct from a payment from the Fund any amount which the Trustee is required to deduct for tax.

6.16 **Pension Benefits**

6.16.1 **Payment of Pension**

A Benefit that is payable as a Pension must be paid to the Pensioner as a Pension in accordance with this Deed and these Rules but always subject to the Relevant Requirements.

6.16.2 **Type of Agreed Pension and Pension Agreement**

- (a) The Trustee and the Pensioner may agree to any type, manner or form of Pension being provided to the Pensioner that suits the needs of the Pensioner, subject to the requirements of these Rules and the Relevant Requirements.
- (b) If the Trustee and the Pensioner agree on a particular type of Pension to be provided to the Pensioner (the "Agreed Pension") they must if they consider it necessary or desirable to comply with the Relevant Requirements record that agreement between them in writing ("the Pension Agreement") specifying any particular rules and requirements governing the Agreed Pension (the "Agreed Pension Rules").
- (c) Any Pension Agreement made under this clause must be read and construed in conjunction with and will be deemed to form part of these Rules as between the Trustee and the Pensioner but does not otherwise constitute an amendment to these Rules.
- (d) If there is any inconsistency between any requirement of the Agreed Pension Rules and:
 - (i) any provision of these Rules - then the requirement of the Agreed Pension Rules prevails; or
 - (ii) any provision of the Relevant Requirements - then the provision of the Relevant Requirements prevails:to the extent of that inconsistency.

6.16.3 **Amount of Pension**

The Trustee will determine the amount of any Pension and may take account of:

- (a) the wishes of the Pensioner; and
- (b) if required for the purpose of that Pension, actuarial advice obtained from an Actuary as to the appropriate amount and manner of the payments of the Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy,

the Investment Strategy guidelines for that Pension, and any prudential requirements imposed on the Trustee by the Relevant Requirements; and

- (c) any other provisions of the Relevant Requirements or the Responsible Authority.

6.16.4 **Pension Account**

The Trustee must establish a Pension Account in respect of the Pensioner from which the Pension shall be paid. The Pension Account may be operated by the Trustee as the Trustee sees fit, but always subject to the Relevant Requirements

6.16.5 **Segregation of Pension Assets**

The Trustee must, if required under the Relevant Requirements, in relation to each Pension:

- (a) segregate and set apart assets of the Fund for each Pensioner for the sole purpose of enabling the Fund to discharge the whole or part of any current or non-current liability in relation to the payment of the Pension as those liabilities fall due for payment; and
- (b) obtain actuarial certificates from an Actuary in relation to the adequacy of the segregated assets to meet the current and non-current liabilities as the Trustee considers necessary to satisfy the Relevant Requirements.

6.16.6 **Conditions Applicable to all Pensions**

Subject to the Relevant Requirements, the Following conditions apply to the payment of any Pension from the Fund:

- (a) the Pension must be account based unless the Relevant Requirements permit otherwise;
- (b) the Pension must be paid from the balance of the Pension Account of the Pensioner;
- (c) the payments of the Pension are made at least annually;
- (d) the Pension must not be able to be transferred to any person unless the Relevant Requirements permit;
- (e) the capital value of the Pension and the income from the Pension must not be used as security for any borrowing unless the Relevant Requirements permit;
- (f) the capital supporting the Pension cannot be increased by using contributions or roll-over amounts once the Pension has started; and
- (g) before the Pension can be commuted a minimum amount must be paid in certain circumstances.

6.16.7 **Variation to Pension Amount**

The Trustee may vary the Pension from time to time as long as the variation:

- (a) complies with the Relevant Requirements;
- (b) is in accordance with any on-going actuarial advice that is required to be obtained or maintained; and/or
- (c) complies with any Pension Agreement for that Pension.

6.16.8 **Limitation on Pension**

The total instalments of a Pension payable in respect of a Pensioner must not exceed the balance of the Pensioner's Pension Account at the relevant time.

6.16.9 Death of Pensioner

Subject to any Agreed Pension Rules made in a Pension Agreement under these Rules and the Relevant Requirements, if a Pensioner dies leaving an amount in credit in the Pension Account of the Pensioner:

- (a) if a Nominated Beneficiary has been nominated by the Pensioner, the Trustee must, unless otherwise requested to the contrary by the Nominated Beneficiary, pay to the Nominated Beneficiary the balance of the Pension Account (either as a Pension or commuted to a lump sum) provided that the amount does not exceed an amount calculated in accordance with the Relevant Requirements; or
- (b) if no Nominated Beneficiary has been nominated, the balance of the Pension Account must be paid to any one or more of the Dependants of the Pensioner as the Trustee may determine and/or to the legal personal representative of the Pensioner, subject to the Relevant Requirements.

6.16.10 Application to convert Lump Sum Benefit to Pension

A Member may by written application to the Trustee elect to convert to a Pension the whole or any part of a Benefit which is payable as a lump sum but has not already been paid under these Rules.

6.16.11 Commutation of Pension to a Lump Sum

- (a) On the written application of a Pensioner or Nominated Beneficiary of a deceased Pensioner, the Trustee must commute the whole or any part of a Pension payable from the Fund to the Pensioner or Nominated Beneficiary, as the case may be, provided that the commutation would not cause the Trustee or the Fund to breach the Relevant Requirements. The Trustee must not commute the Pension if the Relevant Requirements prohibit its commutation.
- (b) The Trustee may apply the amount of the commuted Pension by either:
 - (i) retaining the amount in the Fund as a credit to an Accumulation Account for the Pensioner or Nominated Beneficiary; or
 - (ii) paying the amount as a Benefit in the form of a lump sum or Pension in accordance with the provisions of these Rules.
- (c) If part of a Pension is commuted, the Trustee may reduce the total amount of the instalments in respect of the balance of the Pension payable to the Pensioner by an amount that the Trustee considers appropriate subject to the compliance with the Relevant Requirements.

6.16.12 Purchase of Pension or Annuity from Third Party

A Member may request that the Trustee apply the Benefit payable to the Member to purchase a Pension Annuity for or in respect of the Member from a third party.

7 RECORDS AND ACCOUNTS

7.1 Records

The Trustee must keep records for the Fund in the manner and form prescribed by the Relevant Requirements of:

- (a) Members;
 - (b) assets and liabilities;
 - (c) income and expenditure;
 - (d) all other matters specified by the Relevant Requirements,
- and retain them for the period specified by the Relevant Requirements.

7.2 Accounts and Audit

The Trustee must appoint an Auditor who meets the Relevant Requirements.

7.3 For each Financial Year the Trustee must prepare any financial statements of the Fund.

7.4 The Trustee must ensure that, for each Financial Year, the Auditor:

- (a) audits the accounts and records of the Fund; and
- (b) reports in writing to the Trustee,

within the time specified by the Relevant Requirements.

7.5 The Trustee must give to the Members a copy of the financial statements and the Auditor's report.

7.6 Contribution Accounts

The Trustee must record for each Member in a Contribution Account contributions made by the Member, on behalf of or in respect of the Member including by an employer or the Government for the Member.

7.7 The Trustee must also record in each Contribution Account:

- (a) amounts transferred from other funds which the Trustee decides to credit to the account;
- (b) life insurance premiums which the Trustee decides to debit to the account;
- (c) proceeds of life insurance policies to the extent that they were funded by premiums debited to the account;
- (d) amounts debited to the account for tax or other expenses;
- (e) amounts credited or debited to the account for earnings or losses of the Fund;
- (f) amounts paid as Benefits or transferred to other funds from the account;
- (g) amounts transferred to or from the Reserve Account or the Unallocated Contributions Account.
- (h) amounts transferred to or from another Contribution Account which the Trustee decides to transfer with the consent of the Member;
- (i) amounts debited or credited to the account in accordance with an order or agreement under the Family Law Act;
- (j) any other matters or amounts which the Trustee considers appropriate.

7.8 Tax and Expenses

The Trustee may debit to Contribution Accounts:

- (a) tax incurred by the Trustee;
- (b) expenses of the Fund;
- (c) administration expenses of the Trustee;
- (d) provisions for paragraph (a), (b) and (c),

in proportions which the Trustee considers fair and which are consistent with the Relevant Requirements.

7.9 Distribution Date

The Trustee must declare a Distribution Date at least once in each Financial Year.

7.10 Fund Earning Rate

The Trustee may declare:

- (a) as soon as practicable after a Distribution Period ends, a Fund Earning Rate to be applied as at the Distribution Date to Contribution Accounts that remain at the date of declaration; and
- (b) whenever it considers appropriate, an interim Fund Earning Rate to be applied to the Contribution Accounts of a Member as at the date when a benefit or transfer becomes payable from them, for the period since the last date as at which a distribution was made to those Contribution Accounts.

7.11 The Trustee may decide whether a Fund Earning Rate is to be applied to Contribution Accounts:

- (a) on daily balances; or
- (b) on average balances; or
- (c) on some other basis.

7.12 In determining the Fund Earning Rate the Trustee must comply with the Relevant Requirements and take into account:

- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
- (b) the realised and unrealised losses and expenses of the Fund, including any tax that is or may be incurred by the Trustee which are not debited to a Contribution Account; and
- (c) the appropriateness of averaging earnings, losses and expenses over several Distribution Periods.

7.13 A Fund Earning Rate may be positive or negative.

7.14 The Trustee must distribute earnings or losses to Contribution Accounts at the Fund Earning Rate which applies to them.

7.15 Investment Fluctuation Reserve

The Trustee may set up a reserve account called the Investment Fluctuation Reserve to handle any differences between the actual earnings or losses of the Fund and the total amount distributed to Contribution Accounts for a Distribution Period.

7.16 The Trustee must not declare a Fund Earning Rate for a Distribution Period that would take the Investment Fluctuation Reserve into debit.

7.17 **Reserve Account**

The Trustee must keep a Reserve Account to hold:

- (a) provisions for tax or other expenses;
- (b) amounts deducted from Benefits for tax;
- (c) any part of a Member's Accumulated Credit no longer required to pay Benefits for the Member;
- (d) any other matters or amounts which the Trustee considers appropriate.

7.18 The Trustee must apply amounts held in the Reserve Account for one or more of the following purposes:

- (a) payment of tax and other expenses;
- (b) additional Benefits for Members;
- (c) other purposes which the Trustee determines.

However, the Trustee may only apply amounts as permitted by the Relevant Requirements, and must apply all amount within the time limit imposed by the Relevant Requirements.

7.19 **Investment Portfolios**

The Trustee may maintain the Fund in separate parts called Investment Portfolios. For any Investment Portfolio the Trustee must:

- (a) select the assets which comprise it; and
- (b) apply rules 7.10 to 7.16 separately to the Investment Portfolio and the Contribution Accounts it represents.

7.20 The Trustee may transfer assets between different Investment Portfolios.

7.21 The Trustee must divide a Contribution Account into sub-accounts representing the proportions in which the Contribution Account is invested in different Investment Portfolios.

7.22 The Trustee may make rules on when and how Members may give directions to apply:

- (a) future contributions; or
- (b) existing balances in Contribution Accounts,
to Investment Portfolios.

7.23 **Unallocated Contributions Account**

Subject to the Relevant Requirements, the Trustee may establish and maintain an Unallocated Contributions Account for the purpose of holding contributions made by a Member or on behalf of or in respect of a Member including by an employer or the Government for the Member, that have not been allocated to a member in accordance with the Relevant Requirements.

- 7.24 Subject to the Relevant Requirements, if the Trustee receives a contribution in a month, the Trustee must allocate the contribution to a Member:
- (a) within 28 days after the end of the month in which the contribution was received; or
 - (b) if it is not reasonably practical to allocate the contribution to the Member within 28 days after the end of the month in which the contribution was received, then within such longer period as is reasonable in the circumstances.

7.25 **Other Accounts or Reserves**

The Trustee may establish or maintain any other account or reserve of the Fund that the Trustee thinks necessary or desirable or that is required or permitted by the Relevant Requirements. The Trustee may use such accounts or reserves for any purpose permitted by the Relevant Requirements and may credit or debit amounts from such accounts or reserves as the Trustee sees fit.

8 ASSETS, INVESTMENTS, BORROWINGS

8.1 **Assets**

The assets of the Fund consist of:

- (a) money or other assets received or receivable or held by the Trustee for the purposes of the Fund; and
- (b) investments made by the Trustee and all income on those investments.

8.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in these Rules.

8.3 **Investments**

Subject to the Relevant Requirements, the Trustee may invest all money which is not required to meet current payments in any manner in which it could invest the money if it were personally entitled to the money, including but not limited to, the following:

- (a) in investments authorised by the law relating to the investment of trust funds;
- (b) in policies of life insurance;
- (c) in trusts or common funds;
- (d) on deposit or loan, with or without security;
- (e) in real property;
- (f) in shares, stocks, notes, options, debentures or other securities; and
- (g) in options, hedging contracts, futures contracts, derivatives, instalment warrants and other financial instruments.

8.4 Subject to the Relevant Requirements, the Trustee may:

- (a) mix investments with investments of other persons, companies or trusts; and
- (b) vary, replace, encumber and deal with the investments, as if it were dealing with its own property.

8.5 The Trustee must invest in a manner which is consistent with the Relevant Requirements and which will not cause the Fund to fail to be a Complying Superannuation Fund. All dealings allowed under these Rules must be at arm's length in respect of each transaction.

8.6 The Trustee may appoint nominees to hold investments.

8.7 The Trustee may appoint any person as custodian to hold legal title for any asset acquired or to be acquired by the Trustee in such terms as the Trustee thinks fit.

8.8 The Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.

8.9 **Investment Restrictions**

Notwithstanding any provisions of these Rules, the Trustee must not apply the whole or any part of the money forming part of the Fund in a manner resulting in the Fund failing to be a Complying Superannuation Fund. Without limiting the generality of the foregoing:

- (a) money of the Fund may not be lent to a Member or to any relatives of a Member, directly or indirectly;
- (b) money of the Fund must not be used to provide financial assistance to a Member or any relatives of a Member;
- (c) money of the Fund must not be lent or invested in a Related Party of the Fund or invested in a Related Trust of the Fund which do not comply with the Relevant Requirements;
- (d) the Trustee must not borrow money whether by way of a secured or unsecured loan, otherwise than as stated in Rule 8.11; and
- (e) all investments of any assets of the Fund must be on an arm's length basis or otherwise as permitted in the Relevant Requirements.

8.10 **Real Property**

Subject to clause 8.9 and the Relevant Requirements, the Trustee may purchase, take on, lease licence, develop, construct, hold, improve, sell, transfer, convey, surrender or otherwise deal with any real property and, without limiting the generality of this clause, to develop any commercial or retail premises and hold, sell, transfer, convey, surrender, lease or licence such premises.

8.11 **Borrowing**

Subject to the Requirements, the Trustee may borrow money or maintain an existing borrowing of money solely for:

- (a) enabling the Trustee to make a payment to a Member which the Trustee is required to make by law or by these Rules and which, apart from the borrowing, the Trustee would not be able to make provided that the period of the borrowing does not exceed 90 days nor 10% of the value of the assets of the Fund;
- (b) enabling the Trustee to cover settlement of a transaction for the acquisition of securities or other instruments allowed under SIS provided that the total amount borrowed by the

Trustee would not exceed 10% of the value of the assets of the Fund and the period of borrowing does not exceed 7 days; or

- (c) any other purpose and/or arrangement which is permitted by SIS.

8.12 **Mortgage**

The Trustee must not mortgage, charge or otherwise encumber the assets of the Fund other than as permitted by SIS.

8.13 **Appointment of Investment Manager**

The Trustee may:

- (a) appoint in writing on any terms which it thinks fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations (individually a "**Manager**") to act on behalf of the Trustee in regard to the purchase, sale, administration or retention of and the dealing in any or all of the investments of the Fund whether in the name of that Manager or otherwise, and delegate any powers to the Manager as the Trustee thinks fit; and
- (b) revoke or vary any of those appointments subject to the terms of any agreement entered into by the Trustee with the Manager.

9 **TRUSTEE**

9.1 **Nature**

The Trustee may be two or more individuals or a Constitutional Corporation.

9.2 A trustee will cease to hold office in any one of the following events:

- (a) the trustee serves written notice to that effect on the Members; or
- (b) the Members so resolve and serve written notice to that effect on the trustee; or
- (c) on the trustee becoming bankrupt or entering into a scheme or arrangement with its creditors; or
- (d) in respect of a trustee that is a body corporate:
 - (i) a receiver or liquidator of the trustee is appointed; or
 - (ii) an order is made, or a resolution passed, for the trustee to be wound up; or
- (e) on the death of the trustee or in the opinion of the other trustees, is mentally ill; or
- (f) the Relevant Requirements so require.

9.3 **Appointment**

Any new trustee may be appointed by the Members or the remaining trustee(s) by notice in writing to the trustee to be appointed.

9.4 The appointment of a trustee must be consistent with the Relevant Requirements.

9.5 A retiring trustee must transfer all assets to the new trustee or its nominee.

9.6 **Trustee's Powers**

Subject to the Relevant Requirements the Trustee may do anything it considers appropriate to administer the Fund, including:

- (a) to give receipts and discharges;
- (b) to conduct and settle legal proceedings;
- (c) to refer claims to arbitration;
- (d) to give any guarantee or indemnity;
- (e) to insure any risks;
- (f) to act as an underwriter;
- (g) to make rules for rounding off contributions and Benefits;
- (h) to provide for and transferring liability for any tax;
- (i) to elect to be bound by any legislation;
- (j) to open any account or accounts with any financial institution to operate such account or accounts, to draw, make, accept, endorse, discount, issue, or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
- (k) to borrow or raise any financial accommodation and to assign, pledge, mortgage or charge any of the Fund as security for any such financial accommodation;
- (l) to do anything which is not prohibited by the Relevant Requirements; and
- (m) to borrow moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for the purposes of acquiring an asset (other than an asset that the Trustee is prohibited by applicable law from acquiring) upon such terms with or without security by mortgage, charge (whether fixed or floating) or otherwise over the asset. The rights of the mortgagee or charge shall take priority in all respects over the rights of the beneficiaries hereunder and all other persons whatsoever.

9.7 Manager

The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must be in writing on terms which the Trustee considers appropriate.

9.8 Delegation

The Trustee may delegate any of its powers, duties and discretions to any person.

9.9 Trustee's Liability

The Trustee is only liable for their acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.

9.10 Trustee's Indemnity

The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund or the administration of the Trustee unless:

- (a) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) the law prevents it.

9.11 A Member must indemnify the Trustee for:

- (a) any liability incurred; or
- (b) any overpayment made; or
- (c) any failure to provide for tax

as a result of the Trustee relying on information given to them by that Member.

9.12 The benefit of rules 9.9 to 9.11 also apply to:

- (a) any directors or employees of the Trustee;
- (b) any other person nominated in writing by the Trustee;
- (c) any former trustee or any person who previously fell within any of rules 9.12(a) and 9.12(b).

9.13 **Member Authorisation**

The Trustee may treat a written or oral authorisation purported to be given by a Member as given by the Member.

9.14 **Trustee's Discretions**

Generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a trustee or any person being a director or shareholder of a trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the trustee for the time being is the sole trustee.

9.15 The Trustee in the exercise of the powers and discretions vested in it by the Deed and these Rules has an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers and discretions at any time and from time to time or may refrain from exercising all or any of them from time to time or at all.

9.16 **Remuneration**

The Trustee must not receive any remuneration for its office from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.

9.17 **Trustee Meetings**

Where the Trustee is a Constitutional Corporation the Trustee:

- (a) may regulate its meetings as it considers appropriate;
- (b) must appoint a chairman for each meeting;
- (c) may act on a resolution if two thirds of all directors of the Trustee who have voted for it at a meeting.

9.18 Where the Trustee consists of more than one person, the trustees:

- (a) may meet together for the despatch of business;

- (b) may adjourn and otherwise regulate their meetings as they think fit;
- (c) may determine the quorum necessary for the transaction of business provided it is no less than two thirds of the trustees;
- (d) shall appoint a chairman for the time being or from time to time or of each meeting; and
- (e) may act on any resolution approved by two thirds of the trustees. Where the trustees cannot agree upon a chairman for the time being, or from time to time, or of a particular meeting, the chairman shall be the trustee chosen by the trustees present for the meeting. A determination by two thirds of the trustees shall for all purposes be deemed a determination of the trustees.

9.19 Where there is more than one trustee, a resolution in writing, signed by all the trustees for the time being, shall be as valid and effectual as if it had been duly passed at a meeting of the trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more trustees.

9.20 Where there is more than one trustee, the trustees may, from time to time, delegate to any one or more of their number the right and power on behalf of the trustees to sign, draw, accept, make, endorse, issue, discount or otherwise execute (as the case may be) all or any cheques, promissory notes, drafts, bills of exchange, bills of lading and other negotiable or transferable instruments, all or any receipts for money paid to the trustees, and all or any other documents connected with the due administration of the Fund, or with the Deed or these Rules. The trustees may similarly delegate such rights and powers to any secretary of the Fund or to any administrator or investment manager appointed by them.

9.21 **Telephone Meetings**

Where there is more than one trustee a meeting of the trustees may be held by telephone.

9.22 Where the Trustee is a body corporate a meeting of the Trustee may be held by telephone if:

- (a) all directors have been given written or oral notice of the meeting; and
- (b) two thirds of the directors take part in the meeting and each is able to hear each of the others.

9.23 **Written Resolutions**

In respect of a trustee that is a body corporate, a resolution in writing signed by all directors is effective as if it had been passed at a meeting of the trustee, and may consist of several documents in the same form each signed by one or more directors.

9.24 **Minutes**

The Trustee must keep minutes of its meetings. Minutes are evidence of the matters recorded if they are confirmed by the next meeting and signed by the chairman.

9.25 **Trustee Must Be A Company Or Person**

It is a fundamental intention that this Fund is and remains a regulated superannuation fund and therefore complies with SIS and enjoys tax concessional status. To this end the Trustee of this Fund must either be:

- (a) a Constitutional Corporation; or
- (b) two or more natural persons where these persons acting as trustees have made an irrevocable declaration to the commitment of paying an old age pension.

9.26 **General Covenants**

The Trustee covenants to:

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

- (i) operate the Fund in accordance with the standards prescribed by the Relevant Requirements.

9.27 **Directors Covenants**

The Trustee acknowledges that if it is a company then the directors of the Trustee are deemed to have each individually given the same covenants as set out in Rule 9.26 and therefore must ensure the Trustee carries out its duties accordingly and are therefore deemed to be parties to these Rules.

10 **ADMINISTRATION**

10.1 **Expenses**

All the expenses in connection with the Fund are payable from the Fund.

10.2 **Deed and Rules**

A Member may inspect a copy of the Deed and these Rules.

10.3 **Giving of Information**

Every Member and person claiming a Benefit must give to the Trustee any information or documents that the Trustee requires to administer the Fund.

10.4 The Trustee may require a Member to have a medical examination.

10.5 The Trustee may modify a Member's benefit, as in its absolute discretion it thinks fit, if any information given to it about a Member is incomplete or incorrect.

10.6 **Member Information**

The Trustee must give to each Member, information that the Trustee believes a Member requires for the purpose of understanding his or her benefit entitlements in the Fund.

10.7 **Information Concerning Significant Events**

The Trustee of the Fund must give information to a Member concerning a Significant Event. This information must be given within the time limits prescribed in SIS.

10.8 **Statements on Request**

The Trustee must give in the appropriate form to a Concerned Person or an Employer on request by that Concerned Person or Employer such information as is required under SIS.

10.9 **Cessation of Membership**

Where a person ceases to be a Member of the Fund, the Trustee must give, or arrange to be given in the appropriate form, information as is required under SIS to be given to persons who have ceased to be a member of a superannuation fund.

10.10 **Relevant Reporting Period for the Provision of Information**

The Trustee must provide the appropriate information in accordance with this Rule 10 within the relevant periods prescribed by SIS in respect of the type of information being provided to the Member.

10.11 **Confidentiality**

The Trustee must treat as confidential, information relating to Members which it acquires as Trustee and only use the information for the purposes of the Fund or as required by law.

10.12 **Dispute Resolution**

If Relevant Requirements require, the Trustee must take reasonable steps to ensure that arrangements are in force under which:

- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
- (b) inquiries or complaints will be considered and dealt with within ninety (90) days after they were made.

10.13 **Notices**

Any notice or other written communication to a person in connection with the Fund must be:

- (a) handed to the person; or
- (b) delivered to the person's last known address; or
- (c) posted by ordinary post from within Australia to the person's last known address; or
- (d) sent by facsimile to person at the facsimile number notified by the person to the Fund.

10.14 If the notice or communication is;

- (a) posted, it is taken to be received on the third Business Day after posting;
- (b) sent by facsimile, it is taken to be received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the person.

10.15 **Power of Attorney**

Each Member or person claiming a benefit irrevocably appoints the Trustee as the Member's or person's attorney to do all things which the Trustee considers appropriate to administer the Fund.

10.16 **Governing Law**

The Fund and the Deed and these Rules are governed by the law in force in New South Wales.

11 **TERMINATION OF THE FUND**

11.1 **When Terminated**

- (a) The Trustee may decide to terminate the Fund by giving written notice to the Members specifying a termination date;
- (b) The Members may unanimously decide to terminate the Fund by giving written notice to the Trustee specifying a termination date;
- (c) The trusts declared in the Deed and these Rules terminate on the earlier to occur of the eightieth anniversary of the execution of the Deed and the date being 21 years after the date of the death of the last survivor or the issue now living of His Late Majesty King George V, unless the laws governing the Fund provide that the Rule against Perpetuities shall not apply to it;

(d) If there are no Members in the Fund and the Trustee resolves to terminate the Fund;

11.2 **Contributions**

Any contributions in arrears at the termination date must be paid immediately.

11.3 The Trustee must not accept further contributions (other than arrears) after the termination date.

11.4 **Final Distribution**

The Trustee must treat the termination date as a Distribution Date.

11.5 **Application of Fund**

On termination, the Trustee must apply the Fund assets in the following order of priority:

(a) to provide for all expenses and liabilities for which the Trustee is or may become liable;

(b) to provide in respect of each Member:

(i) any Benefit which became payable before the termination date; or

(ii) if paragraph (i) does not apply - a Benefit equal to the Accumulated Credit calculated as at the termination date;

(c) to increase any Benefits as the Trustee may decide.

11.6 **Payment of Benefits**

A Member may not receive a Benefit under rule 11.5 before the Relevant Requirements permit.

11.7 If a Member dies before receiving a Benefit provided under rule 11.5, the Trustee must pay it as a Death Benefit.

11.8 Notwithstanding any other Rule, if termination is as a result of Rule 11.1(d), the Fund must be wound up in accordance with SIS.

11.9 **Application of Other Rules**

On termination and pending the final distribution of all the assets of the Fund, the provisions of this Deed and these Rules continue to apply. However, to the extent of an inconsistency between this rule 11 and any other provision of the Deed and these Rules, rule 11 prevails.

12 **AMENDMENT OF DEED AND RULES**

12.1 **Power to Amend**

Subject to rules 12.4, 12.6, 12.7 and 12.8, the Trustee may amend, add to, delete or replace all or any of the provisions of the Deed or these Rules including this rule 12.

12.2 **Form of Amendment**

An amendment must be in writing.

12.3 **Date of Effect**

An amendment may take effect from a date before or after the time it is made.

12.4 **Limitation of Power**

Notwithstanding any other Rule, no amendment may reduce:

- (a) the amount of any Benefit, calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued or become payable to a Member before the amendment; or
- (b) the amount of any other Benefit that is or may become payable to a Member in relation to a period before the amendment,

unless the Member or the Responsible Authority consents in writing, or the reduction is permitted under the Relevant Requirements.

12.5 **Notification**

The Trustee must notify the Members of the nature, purpose and effect of any amendment in accordance with the Relevant Requirements. However, failure to notify does not invalidate the amendment.

12.6 Notwithstanding Rules 12.1 and 12.4, an amendment to these Rules introduced primarily for the purpose of securing exemption or relief from any tax, duty or other impost in respect of income of, Benefits from, contributions to or otherwise in relation to the Fund, or primarily for the purpose of complying with or conforming to present or future legislation governing or regulating the maintenance or operation of superannuation, pension or like funds, or to correct any manifest error or mistake may, subject to the Relevant Requirements, be made.

12.7 Notwithstanding any other Rule, if the Fund is other than a self-managed superannuation fund the Trustee may only amend the provisions of the Deed or these Rules in accordance with Rule 12.1 if:

- (a) the Trustee has consented to the amendment; or
- (b) if the Fund is an employer sponsored fund the amendment relates to contributions an employer sponsor will, after the amendment, be required or permitted to pay the Fund;
or
- (c) the circumstances in which the amendment was made are covered by SIS.

12.8 Notwithstanding any other Rule, no variation shall:

- (a) If the Trustees are individual trustees, alter the Rules so that the requirement that the Fund must always be maintained for the primary purpose of the provision of old age pensions is removed; or
- (b) If the Trustee is a corporate trustee, remove the requirement from the Rules that the Trustee be a Constitutional Corporation

13 **COMPLIANCE RULE**

Any matter which is:

- (a) prescribed in SIS as being a reference to satisfying the Complying Superannuation Fund conditions; and
- (b) is required to be included in this Deed and these Rules,

in respect of any matter noted in any part of SIS is deemed to be included in this Deed and these Rules if it is not already included and to the extent that any provision of the Deed and these Rules are contradicting or otherwise mutually exclusive to a provision of the Deed and these Rules which are deemed to be included under this Rule 13 the two provisions must as far as possible be interpreted together and to the extent that they cannot be interpreted together the provision of the Deed and these Rules which is deemed to be included under this Rule 13 will prevail and take precedence and the other provision will as is necessary be read down or be deemed to have been excluded from this Deed and these Rules.

SCHEDULE 1
APPLICATION BY MEMBER

TO: The Trustee of the Harding Superannuation Fund

Name of Member:

Address:

Date of Birth:

Name of Employer:

Occupation:

Tax File Number:

Do you wish to transfer benefits received on termination of a prior employment or from a Superannuation Scheme, Approved Deposit Fund or Annuity?:

I apply to become a Member of the Harding Superannuation Fund ("**Fund**") and agree to be bound by the Deed and Rules governing the Fund and any future variations, amendments or modifications lawfully made from time to time.

I approve of Harding Super Pty Ltd as the trustee of the Fund.

In the event of my death I request that the Trustee pay my Death Benefits as indicated in the attached Death Benefit Nomination Notice (Annexure "A")

I declare that the above information is correct in every particular and acknowledge that the Trustee and other persons will rely upon it and that such information forms the basis upon which my entitlement under the Fund may be calculated. To the extent that any misdescription or error (whether innocent or not) gives rise to a liability or loss upon the Trustee or the Fund I hereby indemnify that liability or loss. I undertake to promptly provide the Trustee with such further information as it may require.

DATE:

SIGNED:
Member

**ANNEXURE "A" TO APPLICATION BY MEMBER
DEATH BENEFIT NOMINATION NOTICE**

To the trustee of Harding Superannuation Fund ("the Fund")

Member Details:

Member:

Date of Birth:

Address:

Nominated Beneficiary Details:

Beneficiary Details:

Name:

Date of Birth:

Percentage:

Relationship to Member:

Is this person your Dependent or Legal Personal Representative?:

Form of Benefit:

- Reversionary Pension
 Non-Reversionary Pension
 Lump Sum

Cross where applicable

Binding/Non-Binding

- Binding

In order for your death benefit to be binding, you must nominate either your dependant or a legal personal representative, you must sign the declaration below and you signature must be witnessed by two independent witnesses.

- Non-Binding

Cross where applicable

Lapsing/Non-Lapsing:

Unless amended or revoked earlier, this Nomination is binding on the Trustee/s for the following period (if no period is specified below, the period shall be three (3) years from the date it is first signed or last confirmed – *otherwise please tick / complete one of the following*):

.....
Witness 1

.....
Member

.....
Witness 2

- Indefinitely*; or
- _____ years* from the date it is signed.

Declaration:

I understand and declare that:

1. This nomination revokes any previous nomination which I have made;
2. In the event of my death, the Trustee will pay my death benefits in accordance with this binding death benefit nomination.

Signatures:

Signature of Member: _____

Date: _____

Independent Witnesses:

Signature of Witness 1 _____

Name: _____ Date of Birth: _____ Date: _____

Signature of Witness 2 _____

Name: _____ Date of Birth: _____ Date: _____

Declaration of Witnesses:

I declare that this Death Benefit Nomination Form was signed and dated by the abovenamed Member in my presence and that I am eighteen (18) years or over and I am not named as a beneficiary in this Form.

SCHEDULE 2
APPROVAL OF APPLICATION

TO:

Your application for membership of Harding Superannuation Fund has been approved.

DATE:

Signed by the Trustee of Harding Superannuation Fund.

Executed by)
HARDING SUPER PTY LTD)
in accordance with Section 127 of the Corporations Act)
as trustee for the Harding Superannuation Fund)
by Mark Harding a director and)
by Sue Ellen Harding a director)

Director – Mark Harding

Director – Sue Ellen Harding