

**THE ROSSOW SUPER FUND**

**SUPERANNUATION TRUST DEED**

Super  
factory P/L

Prepared for  
**THE SUPER FACTORY PTY LTD**

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By  
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Super  
factory P/L

**SCHEDULE**

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**1. Name of Fund:**

The Rossow Super Fund

**2. Trustees:**

Warren George Rossow  
25 Booker Parade, Golden Beach, Qld, 4551

Beverley Kay Rossow  
25 Booker Parade, Golden Beach, Qld, 4551

**3. Initial Contribution:**

\$20

**Super**  
**factory** P/L

# SUPERANNUATION TRUST DEED

**MADE BY:** The person specified in the Schedule as the trustee ("the Trustee")

**WHEREAS:**

- A. The trustee has decided to establish an indefinitely continuing superannuation plan to be known by the name specified in the Schedule ("the Fund").
- B. The Trustee has agreed to act as the first trustee of the Fund.

**THIS DEED WITNESSES:**

1. The Trustee declares that the primary purpose of the Fund is the provision of old-age pensions to Members but that such other benefits as may be permitted under the Rules and the Statutory Requirements may also be provided.
2. The Fund shall come into operation on the date of this deed ("the Commencement Date") at which time the Trustee has provided the initial contribution specified in the Schedule for the benefit of the first Members.
3. "The Schedule" and "the Rules" mean the schedule and rules attached hereto respectively as amended from time to time and which shall have effect as if set out in the body of this deed.
4. The assets of the Fund shall be vested in the Trustee upon trust to apply the same in the manner set forth in the Rules.
5. The Fund shall be managed and administered in all respects according to the Rules.
6. The power of appointing and removing trustees shall be as provided in the Rules.
7. The provisions of this deed may be amended in the manner set out in the Rules.
8. This deed and the Rules shall upon execution (and until the Trustee makes a nomination under this clause) be governed by and construed in accordance with the law of the State in which it is executed, but subsequently in accordance with the law of such other State as the Trustee may from time to time nominate in writing.

EXECUTED AS A DEED on the *Fourth* day of *May* 2007.

**SIGNED SEALED AND DELIVERED** )  
 by WARREN GEORGE ROSSOW and )  
 BEVERLEY KAY ROSSOW in the )  
 presence of: )  
 .....  
 Witness

.....  
 .....  
 .....

## THE RULES

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### 1. Interpretation

- (1) The Statutory Requirements from time to time shall be deemed to form part of this deed and Rules and shall prevail to the extent of any inconsistency with the other provisions of this deed and Rules. This deed and Rules shall also be deemed to contain any such provisions necessary from time to time in order:
- (a) for compliance, or in the Trustee's opinion reasonably necessary to facilitate compliance, with the Statutory Requirements,
  - (b) for any beneficial operation of a provision of the Statutory Requirements to apply in relation to the Fund or any matter related to the operation of the Fund (including for the allowance of an income tax deduction or tax offset in respect of contributions to the Fund), and
  - (c) for compliance, or in the Trustee's opinion reasonably necessary to facilitate compliance, with Part VIIIIB of the *Family Law Act 1975* and Regulations thereunder, including any amendment or re-enactment of that Part and Regulations or any legislation passed in substitution for them.

(2) In the deed and in these Rules, unless the context indicates otherwise, the following words and expressions have the following meanings:

**'Act'** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

**'Beneficiary'** means a person who, in respect of a Member or former Member, is receiving or entitled to benefits from the Fund.

**'Complying Superannuation Fund'** means a superannuation fund<sup>D/L</sup> that satisfies all applicable Statutory Requirements, or is otherwise taken to be a complying superannuation fund for the purposes of the Statutory Requirements.

**'Contributor'** means a Member, the Employer of the Member and any other person permitted under the Statutory Requirements to make a contribution to the Fund in respect of the Member, including any Government or Government Agency.

**'Dependants'** means the Spouse and children (including posthumous children) of any age of a Member or former Member, all persons who are (in the opinion of the Trustee in its absolute discretion) at the relevant time dependent in whole or in part upon the Member for their maintenance and support, and any person with whom the Member at the relevant time has an interdependency relationship.

**'Eligible Person'** means a person in respect of whom the Trustee is permitted to accept a contribution under the Statutory Requirements.

**'Employer'** means a person by whom a Member is for the time being gainfully employed, whether on a full-time or part-time basis, and includes an associate of the Employer as defined in the Statutory Requirements. References to the Employer in any Rule requiring the exercise of any discretion, any agreement, determination or approval of any matter, or a decision, opinion, appointment or declaration by it shall, in the case of an Employer being a company, mean the Principals of such Employer or any person appointed by the Principals of such Employer to act on their behalf.

**'Financial Year'** means a period of twelve calendar months ending on the last day of each June, or any part of such a period that may occur at the commencement or termination of the Fund.

**'Member'** means a person who has been admitted to membership of the Fund as provided in Rule 8, is still living and in respect of whom benefits remain in the Fund (not being benefits forfeited under Rule 12).

**'Member's Accumulation Account'** means the account in respect of each Member (or former Member) which is maintained under sub-Rule 7(2).

**'Principals'** means the directors for the time being of a relevant Employer.

**'Preservation Age'** means the preservation age determined under the Statutory Requirements in respect of a Member.

**'Retire'** means to commence retirement within the meaning of that term in the Statutory Requirements.

**'Self Managed Super Fund'** means a Complying Superannuation Fund of fewer than 5 Members, other than a fund of which each trustee must under the Statutory Requirements be an approved trustee.

**'Spouse'**, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person and also includes any previous spouse who is dependent upon the Member.

**'Statutory Requirements'** means the requirements from time to time imposed under any law or by any Statutory Authority which must be satisfied by a superannuation fund in order to qualify for income tax concessions (including the allowance of an income tax deduction or tax rebate in respect of contributions to the Fund).

**'Statutory Authority'** means, as the case may require, any one or more of the Australian Prudential Regulatory Authority, the Commissioner of Taxation and any other Governmental authority responsible for administering any part of the Statutory Requirements.

**'Total and Permanent Disablement'** has the same meaning which it has under any policy of insurance which the Trustee has obtained for the purpose of providing a benefit on a Member's permanent disablement. In the absence of any such policy, or any relevant definition in such a policy, a Member shall be

deemed to have suffered total and permanent disablement if he or she has become incapacitated to such extent as to render him or her permanently incapacitated for the purposes of the Statutory Requirements.

- (3) Unless the context indicates otherwise:
- (a) words importing the singular shall include the plural and vice versa;
  - (b) words importing one gender shall include each other gender;
  - (c) words and expressions shall have the same meaning as they have in the Statutory Requirements;
  - (d) references to a person shall be construed as including references to an individual, firm, corporation, association, government or governmental authority as applicable, and their respective successors, assigns, and legal personal representatives;
  - (e) references to a statute and subordinate instrument having the force of law, including any provision thereof, shall be taken to include references to any amendment or re-enactment of it or any legislation or subordinate instrument passed in substitution for it..
- (4) Headings inserted in any Rule are for convenience only and shall not affect the interpretation of the Rules.

2.

## Assets and Investments

- (1) The assets of the Fund shall be held by the Trustee upon trust to be applied in accordance with the provisions of these Rules.
- (2) The expenses of the operation of the Fund shall be paid out of the Fund.
- (3) Subject to the Statutory Requirements, all moneys received by the Trustee but not required to meet current payments may, in the absolute discretion of the Trustee, either be and remain on deposit in the name of the Trustee, or be reinvested directly or indirectly, in any manner in which the Trustee, if it were personally entitled to such assets, could invest. Without restricting the generality of the foregoing, such permitted manner of investment shall be deemed to include, on such terms as the Trustee determines:
- (a) any one or more of the modes of investment authorised by law for the investment of trust funds;
  - (b) deposits with any bank or financial institution;
  - (c) loans to any person, whether or not secured, on such terms as the Trustee in its discretion determines;
  - (d) the purchase or acquisition, improvement, repair or renovation of, or a loan or deposit at interest upon the security of, such real or personal property of whatsoever nature and wheresoever situate and whether or not subject to

encumbrances or involving liabilities of any kind as the Trustee shall think fit;

- (e) the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
- (f) units of any common fund, property trust or unit trust;
- (g) any annuities, pensions or policies of life insurance, assurance or endowment, including policies providing a sum or sums on the death or disablement of a Member;
- (h) the acquisition of any type of chose in action or purely contractual rights; or
- (i) all other investments not prohibited by the Statutory Requirements.

The Trustee shall have full power to vary, replace, encumber and otherwise deal with and act in relation to all investments (including property of whatsoever nature acquired by the Trustee by way of contribution to the Fund or in any other way) as fully and effectively as a person absolutely and beneficially entitled dealing with his or her own property.

(4) Any investments may be held in such names, including the name of a nominee (whether an individual or a corporation), as the Trustee shall from time to time determine.

(5) The Trustee may borrow money to the extent permitted by the Statutory Requirements and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee thinks fit and in particular by charging or mortgaging all or any of the assets of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money to be borrowed.

### 3. Administration

- (1) The Trustee shall:
  - (a) maintain all records reasonably necessary for the proper and efficient conduct and management of the Fund, including details of Members;
  - (b) provide to Members at or within the times specified such information as is prescribed from time to time by the Statutory Requirements;
  - (c) provide to a Member upon his or her request a copy of the Fund's trust deed and Rules together with all information (including advice from any legal, accounting, taxation or superannuation adviser to the Trustee, at the cost of the Trustee) that would be included in a Product Disclosure Statement required under the Act to be given to the Member, but for the Member's access to all such information; and



- (d) lodge such returns as are prescribed, in the form and manner specified in the Statutory Requirements.
- (2) Every Member and every person claiming a benefit shall, from time to time, give to the Trustee such information and produce to it such documents as the Trustee considers are required for the purpose of putting these Rules into effect and for arranging insurances for the purposes of the Fund.
- (3) Nothing in these Rules shall restrict the right of an Employer to dismiss an employee, or be used to increase damages in any action brought against the Employer in respect of such dismissal, or affect the rights of a Member or his or her legal personal representative, or other persons, to claim damages or compensation at common law, or under a workers' compensation Act or any other statute in force governing compensation, for a Member injured or dying from an accident arising out of, or in the course of, his or her employment with the Employer.

#### 4. Appointment and Removal of Trustee

- (1) Subject to the Statutory Requirements, the Members may at any time by notice in writing signed by not less than two-thirds of them:
- (a) remove any one or more of the Trustees; and
- (b) appoint one or more Trustees of the Fund (whether in replacement of Trustees removed or as additional Trustees).
- (2) The reference in sub-Rule 4(1) to a Member includes, for the purpose of this Rule only, a reference to the legal personal representative of a deceased Member.
- (3) In spite of sub-Rule 4(1), the appointment of a Trustee shall be void if the Trustee is a person or company who or which is prohibited from acting as a trustee of the Fund by the Statutory Requirements. The office of a Trustee shall cease immediately by force of this sub-Rule if the Trustee becomes a person or company prohibited from acting as a trustee of the Fund by the Statutory Requirements.
- (4) A Trustee may resign by notice in writing to all Members.
- (5) A Trustee resigning or being removed under a power contained in this deed shall be discharged notwithstanding that there will remain only a corporation or less than two individuals to act as trustees of the Fund.

#### 5. Self Managed Fund Status

- (1) Subject to sub-Rule 5(2), each Trustee, Member and Beneficiary shall at all times take all steps necessary to ensure that the Fund remains a Self Managed Super Fund.

- (2) Sub-Rule 5(1) shall not apply during such period that all Members and Beneficiaries agree in writing.

## 6. Trustees Generally

- (1) Upon a change of Trustee, the retiring Trustee shall execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the new Trustee.
- (2) Without prejudice to the powers vested in the Trustee by the deed and the Rules or otherwise, the Trustee shall have the following powers:
- (a) to purchase or otherwise acquire, and to sell or otherwise dispose of, property, rights or privileges which the Trustee is authorised to acquire or dispose of on such terms and conditions as it shall think fit;
  - (b) to appoint and at its discretion remove or suspend any actuaries, auditors, investment managers, administration managers, secretaries, clerks, agents, and other servants, appoint them for permanent, temporary or special services as it from time to time thinks fit, determine the powers and duties to be delegated to them and fix their salaries or emoluments. The Trustee may require security in such instances and to such amount as it may think fit, and any person so employed or engaged shall be deemed for the purpose of the Rules to be employed or engaged by the Trustee;
  - (c) to institute, conduct, defend, compromise, settle, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund, also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;
  - (d) to refer any claims or demand by or against the Fund to arbitration and observe and perform the awards;
  - (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
  - (f) to open accounts with any bank, building society or other financial institution and to retain on current or deposit account such moneys as it considers proper and to determine the basis of operation of such accounts, including the signing and endorsing of cheques in connection therewith;
  - (g) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
  - (h) to accept contributions to the Fund, whether in money or such other property as the Trustee determines, and to pay benefits out of the Fund to persons entitled;
  - (i) to decide, as and when the need shall arise, who are Dependants for the purposes of the Rules;

- (j) in case of the mental or physical ill-health, or incapacity, of a person entitled to benefits, to pay or apply such benefits or any of them as the case may be, without being responsible for seeing to the application of payments under this paragraph, or payments made in the exercise of any other power vested in the Trustee by the deed and the Rules;
- (k) to take and act upon the opinion of any legal practitioner whether in relation to the interpretation of the deed, the Rules or any other document or statute or as to the administration of the trusts hereof, without being liable to any Members or their dependants in respect of any act done by it in accordance with such opinion;
- (l) to establish one or more sub-funds (to each of which the provisions of this deed and Rules shall separately apply to the extent applicable) for the benefit of a particular Member, Members or class of Members, to allocate and separately record the investments, benefits, contributions and all other appropriate matters relating to such sub-funds, and to accept directions from Members in relation to any such sub-funds in accordance with the Statutory Requirements;
- (m) to ascertain and fix the value of any of the Fund's investments for any purpose necessary in the conduct or winding up of the Fund, and to deal with any resultant accretions or diminutions in value (taking into account any related future tax liability or benefit on realisation of the relevant investments) as the Trustee in its absolute discretion determines;
- (n) to act and do all things, or to refrain from acting and doing anything, necessary for or which the Trustee considers desirable to facilitate compliance with the Statutory Requirements and any other lawful obligation; and
- (o) to generally do anything which the Trustee considers desirable for the administration of the Fund or in furtherance of its objectives or the interests of the Members.
- (3) The Trustee shall not be liable for any act or default done or omitted in good faith in the administration of the Fund or any loss or damage incurred by the Fund and shall be fully indemnified by the Fund for any act done or omitted in good faith in administering the Fund unless:
- (a) the Trustee fails to act honestly;
- (b) the Trustee intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee is required by law to exercise; or
- (c) the liability is for a monetary penalty under a civil penalty order made pursuant to the Statutory Requirements.

The Trustee shall not in any circumstances be entitled to indemnity, reimbursement or recompense from the Members or any of them or any other

person entitled to benefits from the Fund and the Members shall not be liable for the debts of the Fund.

- (4) For the purposes of this deed and the Rules, the Trustee shall be entitled to regard an exercise of a discretion, or the giving of any instruction or other authorisation, made orally, or written and signed by, or purported to be signed by, a Principal for the time being of an Employer as a valid exercise of discretion, instruction or other authorisation of the Employer.
- (5) Where the Trustee consists of more than one person, the Trustees:
  - (a) may meet together (including by being linked by any kind of technology, provided that each trustee for the duration of the link is able to hear and be heard by all other trustees) for the dispatch 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 Trustees;
  - (d) shall appoint a chairman for the time being or at each meeting; and
  - (e) may act on any resolution approved by not less than two-thirds of the Trustees.

A determination by not less than two-thirds of the Trustees shall for all purposes be deemed a determination of the Trustees.

- (6) A resolution in writing and 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.
- (7) If a Trustee is a company, then such company may exercise or concur in exercising any discretion or power conferred on the Trustee by the deed or by these Rules by a resolution of its directors in accordance with the company's Constitution. Such a company may delegate the right and power to exercise, or concur in exercising any such discretion or power, to one or more of its directors from time to time.
- (8) Any individual Trustee (and where a Trustee is a company, any director or other officer of the Trustee) may exercise or concur in exercising all powers, authorities and discretions conferred on the Trustee by the deed or by these Rules, or by law given to the Trustee, notwithstanding that he or she may have a direct or other personal interest in the mode or result of exercising any such power, authority or discretion. Any Trustee or director or officer as aforesaid may abstain from acting except as a merely formal party in any matter in which he or she may be so personally interested.
- (9) Subject to the Statutory Requirements, the Trustee in the exercise of the powers, authorities and discretions vested in it by the deed and these Rules shall have an absolute and uncontrolled discretion in respect of which it is not

obliged to give reasons for the exercise or failure to exercise. The Trustee may exercise or enforce all or any of those powers, authorities 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.

- (10) Where there is more than one Trustee, the Trustees may from time to time delegate to any one or more of their number (including the directors and other officers of any Trustee which is a company) 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.
- (11) The Trustee may cause:
- (a) minutes of any proceedings of meetings of the Trustee to be retained for the records of the Fund; and
  - (b) those minutes to be signed by each person present at the meeting or by the chairman of the meeting.

(12) Any minutes retained in accordance with paragraph 6(11)(a) and that purport to be signed as provided in paragraph 6(11)(b) shall be evidence of the proceedings and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened.

## 7. Accounts

- (1) The Trustee shall maintain such financial and other records as are reasonably required in order to determine the financial results and position of the Fund at any time and to explain all transactions of the Trustee and their effect on the benefits and potential benefits of Members.
- (2) The Trustee shall, in respect of each Member, maintain a Member's Accumulation Account to which shall be credited:
  - (a) contributions to the Fund in respect of the Member (other than to the extent to which such contributions are credited to a reserve account in accordance with an exercise of the Trustee's discretion under sub-Rule 7(4));
  - (b) benefits for the Member resulting from the roll over, transfer or allotment in accordance with the Statutory Requirements of splittable contributions made in respect of the Member's spouse;
  - (c) any transfer or roll over of benefits in respect of the Member to the Fund under sub-Rule 13(1);

- (d) an equitable proportion of the earnings of the Fund for any Financial Year or other period, which the Trustee shall determine having regard to the balance of the Member's Accumulation Account compared with the aggregate total of all Members' Accumulation Accounts and reserves of the Fund, throughout the relevant Financial Year or other period;
- (e) the proceeds receivable by the Trustee under any policy or policies of insurance, assurance or endowment in respect of the Member; and
- (f) such transfers from any reserve account or accounts as the Trustee in its absolute discretion determines, whether before or subsequent to the commencement of the payment of benefits to the Member;

and to which shall be debited:

- (g) all premiums paid on any policy or policies of insurance, assurance or endowment in respect of the Member, to the extent that such premiums are not debited to a reserve account;
- (h) all income or other taxes and Government charges of whatsoever nature relating to the contributions or benefits for the Member, to the extent that such taxes are not debited to a reserve account;
- (i) an equitable proportion of the administration expenses and losses (whether or not realised) of the Fund for any Financial Year or other period, to the extent to which such expenses and losses are not debited to a reserve account, and which proportion the Trustee shall determine having regard to the balance of the Member's Accumulation Account compared with the aggregate total of all Members' Accumulation Accounts and reserves of the Fund, throughout the relevant Financial Year or other period;
- (j) all benefits paid in respect of the Member, whether paid to the Member or a Beneficiary;
- (k) any amount that the Trustee is obliged to repay in respect of a contribution, transfer or roll over to the Fund for the Member;
- (l) any transfer or roll over of benefits in respect of the Member from the Fund under sub-Rule 13(1);
- (m) so much of the Member's splittable contributions as are rolled over, transferred or allotted in accordance with the Statutory Requirements for the benefit of the Member's spouse; and
- (n) such other amounts from time to time as the Trustee, with the written consent of the Member (or Beneficiary, if applicable), determines.

- (3) The Trustee may also maintain such reserve accounts as it determines from time to time for any purposes whatsoever, including the payment of benefits or additional benefits to Members and Beneficiaries (whether by annuity, pension, lump sum or any other form of benefit), the payment of expenses incurred in

conducting and managing the Fund and as a provision against a reduction in the values of (or a loss on the realisation of) one or more of the investments of the Fund.

- (4) Any such reserve accounts may, subject to the Statutory Requirements:
- (a) be credited with all such amounts (and from any source whatsoever) as the Trustee in its absolute discretion determines including contributions in respect of any one or more Members and earnings of the Fund; and
  - (b) be debited with all such amounts as the Trustee in its absolute discretion determines.

## 8. Eligibility and Membership

- (1) Any Eligible Person may make application to the Trustee in a form prescribed by the Trustee, from time to time, to join the Fund. Every such application shall include or be accompanied by all such information and documents as the Trustee requires and the applicant must submit to any medical checks required by the Trustee.
- (2) The Trustee may accept or refuse any application for membership in its absolute discretion and shall not be required to assign any reason for a refusal.

(3) A person shall become a Member from the date when the Trustee approves his or her application, whether or not the Member has been notified of such approval.

(4) A person ceases to be a Member on the happening of the first of the following:

- (a) when the Member dies;
- (b) when the total amount of all amounts payable under the Rules in respect of his or her membership has been paid; or
- (c) when under the Rules all benefits payable to the Member or any other person in respect of his or her membership cease to be payable.

(5) Each Member shall, by virtue of his or her application, be deemed to have consented to be bound by the provisions of the deed and the Rules and agreed to advise the Trustee when he or she ceases to be gainfully employed.

## 9. Contributions

- (1) Subject to the provisions of this Rule and the Statutory Requirements, a Contributor may contribute money (or such other property as the Trustee is willing to accept) to the Fund in respect of a Member of such amount and at such times as the Contributor determines.
- (2) No Contributor shall make a contribution to the Fund in any financial year which would bring the total amount of contributions made in respect of a Member during that Financial Year to the Fund, or to the Fund and to any other

Complying Superannuation Fund, above the limit (if any) imposed from time to time under the Statutory Requirements.

- (3) The Trustee may accept an application by a Member for the roll over, transfer or allotment for the benefit of the Member's spouse in accordance with the Statutory Requirements of splittable contributions made in respect of the Member.
- (4) If any Member of the Fund ceases to be an Eligible Person, no person shall except to the extent permitted by the Statutory Requirements make any further contribution to the Fund in respect of the Member until the Member shall again become an Eligible Person.
- (5) The Trustee shall not, except to the extent permitted by the Statutory Requirements, knowingly accept from a Member or from any person in respect of the Member:
  - (a) any contribution to the Fund while to its knowledge the Member is not an Eligible Person; or
  - (b) any contribution to the Fund to the extent to which the total amount of contributions made in respect of the Member during that Financial Year to the Fund, or to the Fund and to any other Complying Superannuation Fund, would exceed the limit (if any) imposed from time to time under the Statutory Requirements.
- (6) Each Member and each Contributor shall provide such information as the Trustee requires in order to apply all contributions, and to manage the Fund generally in accordance with the Rules of the Fund and the Statutory Requirements.
- (7) Within 60 days of becoming aware that a Member ceased to be an Eligible Person, or that a limit referred to in either sub-Rule 9(2) or 9(5) has been exceeded, the Trustee shall repay such contributions made to the Fund in respect of the Member to the extent to which such contributions are not permitted by the Statutory Requirements. For the purpose of determining the Member's interest in the Fund, it shall be assumed that such amounts repaid were never contributed to the Fund.

#### 10. **Benefits**

- (1) Benefits shall become payable to or in respect of a Member when the Member:
  - (a) retires on or after attaining the Preservation Age;
  - (b) attains the Preservation Age at a time that he or she is retired;
  - (c) retires as a result of Total and Permanent Disablement;
  - (d) dies; or



- (e) in such other circumstances as the Trustee in its absolute discretion determines, provided that the payment of benefits in such circumstances is not prohibited by the Statutory Requirements.
- (2) Subject to the Statutory Requirements, retirement benefits which have become payable under sub-Rule 10(1) need not be paid (or commence to be paid, if applicable) immediately but may be retained in the Fund until the Member otherwise elects.
- (3) In spite of sub-Rules 10(1) and 10(2), benefits shall be paid (or commence to be paid, if applicable) at such other times required by the Statutory Requirements.
- (4)
- (a) The benefits payable to a Member or Beneficiary shall be paid by way of a pension or annuity with such periodical payments as the Trustee determines.
  - (b) The terms of any such pension or annuity may, subject to the Statutory Requirements, be amended from time to time by the Trustee.
  - (c) The terms of any such pension or annuity for the time being shall be deemed to be rules of the Fund.
  - (d) Subject to the Statutory Requirements, the Member or Beneficiary shall on becoming entitled to payment of a pension or annuity benefit or at any future time that the Member or Beneficiary still has an interest in the Fund be entitled to require the Trustee to convert their benefit (or a part thereof) to a lump sum.
- (5) Subject to paragraph 10(6)(b), any death benefit shall be paid by the Trustee in the manner in which in its absolute discretion it decides including by way of purchased annuities, pensions or other periodical payments (in each such case upon such terms as the Trustee may decide), or lump sum payments, or any combination of such methods of payment to one or more of the following: P/L
- (a) one or more of the Dependants of the former Member, in such proportions as the Trustee in its absolute discretion decides;
  - (b) the legal personal representative of the former Member; or
  - (c) one or more other persons permitted by the Statutory Requirements, in such proportions as the Trustee in its absolute discretion decides.
- (6)
- (a) A Member may at any time when no notice under paragraph 10(6)(b) is in force give written notice to the Trustee expressing which of the Member's Dependants (and in what proportions) he or she prefers should receive benefits in the event of the Member's death, and such notice may be amended or revoked at any time whether or not a fresh notice is given by the Member.

- (b) A Member may, by written notice to the Trustee complying with all applicable provisions of the Statutory Requirements, require the Trustee in relation to any death benefits payable in respect of the Member to pay such benefits or any part thereof to one or more of his or her legal personal representative and/or Dependants.
- (7) The Trustee may, subject to the Statutory Requirements and in lieu of paying in cash the whole or part of any benefit or other amount payable pursuant to the provisions of the deed or the Rules, transfer any of the assets of the Fund of equivalent value to the person so entitled.

## 11. Benefit Amounts

- (1)
- (a) Any benefit which has become payable under Rule 10 (other than a benefit payable under paragraph 10(1)(e)) shall be calculated based on the amount standing to the credit of the Member's Accumulation Account at the relevant time and, until no further benefit is payable in respect of the Member or such time (if any) as the whole of the balance of the Member's benefit is converted to a lump sum benefit, the Member's Accumulation Account shall continue to have credited and debited to it the amounts referred to in sub-Rule 7(2) and benefits shall be payable from that account as so adjusted.
- (b) Any benefit payable under paragraph 10(1)(e) shall be such amount or amounts as the Trustee (subject to the Statutory Requirements) in its absolute discretion determines.
- (2) For so long as a Member is bankrupt or otherwise subject to an arrangement under a bankruptcy law:
- (a) the amount of any pension or annuity to the Member that commenced before the commencement of the bankruptcy or arrangement shall be reduced to the minimum annual amount required under the Statutory Requirements;
- (b) no part of any such pension or annuity may be converted to a lump sum; and
- (c) no new pension or annuity shall become payable to the Member.
- (3) If all benefits payable in respect of a Member have been paid out of the Fund, then any balance remaining in the Member's Accumulation Account may be transferred to such reserve account as the Trustee determines or, at the Trustee's discretion, applied to other Members' Accumulation Accounts.

## 12. Forfeited Benefits

- (1) Benefits (other than minimum benefits prescribed by the Statutory Requirements) in the Fund in respect of a Member shall be, to the extent lawful:

- (a) forfeited if the Member becomes a bankrupt or subject to an arrangement under a bankruptcy law or if, without the prior approval of the Trustee, the Member purports to assign, alienate or charge such benefits or part thereof;
  - (b) suspended if the Member, being either under the Preservation Age or not yet having retired at the relevant time, becomes or is in the opinion of the Trustee, mentally ill, or of unsound mind, or incapable of managing his or her own affairs.
- (2) The whole of the benefits forfeited by a Member under paragraph 12(1)(a) or any other Rule of the Fund shall, subject to the Statutory Requirements, be applied by the Trustee as the Trustee may think fit.
- (3) The whole of the benefits to which a Member would otherwise have been entitled but which have been suspended under paragraph 12(1)(b) shall be dealt with in accordance with, and shall be subject to, the following provisions:
- (a) Upon such suspension the person shall cease to have any right, title or interest whatsoever to or in such benefits.
  - (b) If, prior to the date upon which the person ceases to be a Member for any reason whatsoever, the person ceases to be one to whom paragraph 12(1)(b) applies, then the suspension of such benefits shall cease and the Trustee shall thereafter hold such benefits in respect of the person as if the suspension had not intervened.
  - (c) If such benefits remain suspended at the earliest of the time when the person ceases to be a Member for any reason whatsoever and the time when the payment of benefits has to or would (but for the suspension of the benefits) have had to commence, such benefits shall thereupon be taken to be benefits becoming payable on the death of the person and shall be dealt with for the benefit of the person's Dependants accordingly or forfeited if there are no Dependants.
  - (d) While such benefits are suspended, the Trustee may pay amounts from the benefits to, or for the benefit of, the relevant Member or his or her Dependants for, but only for, their personal maintenance and support in the case of hardship.

### 13. Transfers in and to Other Funds

- (1) The Trustee may make such arrangements as it thinks proper with any person, including a Member, any current or previous Employer of the Member and the trustees of any superannuation fund of which the Member was or is a member, for any transfer or roll over of assets to the Fund permitted under the Statutory Requirements, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to, or consequent upon, the transfer or roll over of such assets to the Fund.
- (2) The Trustee shall, if requested by the Member or if necessary to maintain compliance with Rule 5, in lieu of part or all of any other benefit to which the

Member may be entitled under these Rules, roll over or transfer to the trustee of another Complying Superannuation Fund (or such other fund or institution as the Statutory Requirements permit) such portion of the assets of the Fund as would be equal to the Member's Accumulation Account at the date of transfer, if such date was the end of a Financial Year.

#### 14. Termination of the Fund

- (1) The trusts hereby declared shall be wound up as hereinafter provided upon the happening of any of the following events:
  - (a) if it shall appear to the Trustee that the Fund is insolvent and it resolves to terminate the Fund;
  - (b) if for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund; or
  - (c) if there are no Members in the Fund or Beneficiaries and the Trustee resolves to terminate the Fund.
  
- (2) Upon the trusts hereof ceasing and terminating in accordance with sub-Rule 14(1), the Trustee shall give notice in writing to each Employer who has contributed to the Fund within the previous 2 years and to each of the Members and Beneficiaries, if any, that the Fund shall be wound up on a specified date ("the closing date"). As from the closing date the following shall apply:
  - (a) no further contributions shall be made by any Contributor, other than arrears of contributions due up to the closing date; and
  - (b) arrears of contributions, if any, shall be called in immediately.
  
- (3) Upon the trusts ceasing and terminating in accordance with sub-Rule 14(1), the Trustee shall make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the payment of the following benefits in the following order of priority:
  - (a) Payments which on, or before, the closing date have become payable to Members or Beneficiaries.
  - (b) Payments to each retired Member who has not yet attained the preservation age, equal to the balance of the Member's Accumulation Account.
  - (c) Payments to each Member who has not retired, equal to the balance of the Member's Accumulation Account.
  
- (4) If, after providing benefits to Members and Beneficiaries in terms of sub-Rule 14(3) a surplus remains, such surplus shall be paid by the Trustee, to or for the benefit of any one or more of the persons in one or more of the following classes, and in such proportions, as the Trustee in its absolute discretion determines:

- (a) any Members;
  - (b) any former Members;
  - (c) any Dependants of any such Members or former Members;
  - (d) the legal personal representatives (in their capacities as such) of any such Members, former Member or Dependants; or
  - (e) any Employer or former Employer who has contributed, as the Trustee in its absolute discretion determines and, if provided to or for two or more Employers, in such proportions as the Trustee in its absolute discretion determines.
- (5) The payment to be provided under this Rule 14 to or for the benefit of any person as determined by the Trustee shall be made only in compliance with the Statutory Requirements.

#### 15. **Amendment of Deed**

- (1) Subject to sub-Rule 15(3), the Trustee with the consent of not less than two-thirds of the Members may at any time by resolution, or by instrument in writing, amend all or any of the provisions of this deed and these Rules.

- (2) The reference in sub-Rule 15(1) to a Member includes, for the purpose of this Rule, only a reference to the legal personal representative of a deceased Member.

- (3) Any amendment to the deed or Rules shall, to the extent to which such amendment results in a reduction of a Member's right or claim to accrued benefits, be void unless the Member has consented in writing to such amendment.

- (1)

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