

# DEED OF VARIATION

of the

**LUTTGENS SUPERANNUATION FUND**

BY

**THE TRUSTEES**

Jason Richard Luttgens  
Cheryl Linda Luttgens

**PREPARED FOR**

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**DATED: 2ND SEPTEMBER, 2011**

**PREPARED BY**

CASTLE LEGAL PTY LTD  
Level 2, 2A Cambridge Street  
BOX HILL VIC 3128

## DEED OF VARIATION OF SUPERANNUATION TRUST DEED

THIS DEED OF VARIATION is made the 2nd day of September, 2011.

### PARTIES:

BETWEEN: Jason Richard Luttgens of 140 Owens Road, Worri Yallock in the State of Victoria  
and  
Cheryl Linda Luttgens of 140 Owens Road, Worri Yallock in the State of Victoria  
  
(the Trustees)

### WHEREAS:

- A. A superannuation fund (referred to as the **Fund**) was established by a deed (referred to as the **Original Trust Deed**) bearing the date referred to as the commencement date shown in the schedule (**Schedule**) to this deed (**Deed of Variation**). The Fund is known by the name shown in the Schedule to this Deed of Variation.
- B. By instrument dated 29th June, 2010, Marlo Kate Luttgens resigned as trustee of the Fund and Cheryl Linda Luttgens was appointed as trustee in her place.
- C. The Trustees are the current trustees of the Fund.
- D. The Trustees have determined to vary the Original Trust Deed in order to accommodate and comply with the requirements of a number of changes in legislation pertaining to the operation of superannuation funds in the manner set out in this Deed of Variation.
- E. Clause 24 of the Original Trust Deed which allows for variations to the Original Trust Deed is set out in the Annexure marked with the letter "A" attached to this Deed of Variation.
- F. The Trustees wish to add to and alter (**Vary**) the Original Trust Deed of the Fund in the manner set out in this Deed of Variation which Variation is in accordance with the requirements specified in Clause 24 and does not infringe any limitation set out in that clause.
- G. This Deed of Variation is made pursuant to the powers of the Trustees under the Original Trust Deed for the Fund.

### NOW IT IS HEREBY AGREED:

#### Definitions and Interpretations

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

**Replacement of Original Trust Deed**

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

**Confirmation**

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

**Governing Law**

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


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EXECUTED AS A DEED

TRUSTEES

SIGNED, SEALED and DELIVERED by  
the said JASON RICHARD LUTTGENS in  
the presence of:

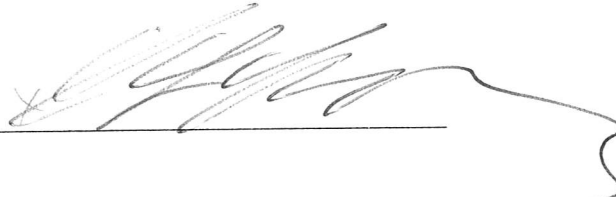
}  
}  
}


  
\_\_\_\_\_

\_\_\_\_\_ WITNESS

SIGNED, SEALED and DELIVERED by  
the said CHERYL LINDA LUTTGENS in  
the presence of:

}  
}  
}

  
\_\_\_\_\_

  
\_\_\_\_\_

WITNESS

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**SCHEDULE**

COMMENCEMENT DATE: 15th October, 2007

NAME OF FUND: Luttgens Superannuation Fund

GOVERNING LAW: Victoria

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ANNEXURE "A"

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Clause 24 of the Trust Deed which allows for variations to the Trust Deed is set out hereunder

**VARIATION**

**24.**

24.1 The Trustee may at any time, by deed or written resolution, vary this Deed and such variation shall apply on the date of variation or on a prospective or retrospective basis (including any provisions deemed to be included under rule 26) subject to rules 24.2 to 24.4:

24.2 Any amendment to this Deed shall continue to ensure that:

- (a) the Trustee of the Fund is a Corporate Trustee; or
- (ii) the sole or primary purpose of the Fund is the provision of Old-Age Pensions.

24.3 No amendment shall reduce a Member's Interest accrued before the date of the amendment unless the Trustee has the written consent of any Member whose Interest would be reduced or adversely affected.

24.4 Despite rule 24.3, an amendment may reduce a Member's Interest accrued before the date of the amendment without obtaining any Member's consent if:-

- (a) the reduction in Interest is required because of, and does not exceed the value of, any additional Tax payable on the Fund's Earnings due to such things as changes in Taxation Laws; or
- (b) the reduction is required to enable the Fund to comply with the Standards or the Regulator provides its written approval to the reduction; or
- (c) the amendment is otherwise authorised by the Standards;

and the Trustee need not observe any of the conditions in Trustee Law which may otherwise apply to the amendment or to the process of making the amendment.

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ANNEXURE "B"

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**OPERATIVE PROVISIONS:**

Now this deed witnesses as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

**Pension Age:-**

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

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

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

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

**Preservation Age** means:-

- (a) for a person born before 1 July 1960 - 55;
- (b) for a person born 1 July 1960 to 30 June 1961 - 56;
- (c) for a person born 1 July 1961 to 30 June 1962 - 57;
- (d) for a person born 1 July 1962 to 30 June 1963 - 58;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) has the same meaning as that phrase (or the equivalent expression) has for the time being and from time to time in and for the purposes of a policy or policies of insurance; or

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

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

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

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

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

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

## 1.2 Interpretation

(a) **Plural and gender of words**

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

(b) **Headings to Clauses**

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

(c) **Defined Words**

For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

(d) **Statutory Enactments**

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

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

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

(f) **Clauses**

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

(g) **Agreements and Documents**

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

(h) **Parts of speech**

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

(i) **Joint and Several Liability**

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

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

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

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

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

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

### 3.2 **Continuation of Trustee**

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

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

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

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

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

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

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

## 4. **OPERATION OF THE FUND**

- 4.1 The Fund shall comprise:-

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

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

## 5. TRUSTEE

- 5.1 Subject to this Deed, the Trustee shall have all the powers and discretions and be entitled to such indemnities that by this Deed or by law are conferred upon the Trustee.
- 5.2 The Trustee must perform and observe the covenants, trust conditions and obligations of this Deed as and to the extent they are included in the Deed or deemed to be included in the Deed by the Relevant Law.
- 5.3 A Trustee of the Fund shall be:-
- (a) two, three or four individuals; or
  - (b) a constitutional corporation within the meaning of Section 10 of SIS.
- 5.4 A person must not be or act as a trustee or a director of a trustee company of the Fund if the person knows they are a disqualified person under SIS.
- 5.5 At all times while the Fund is neither a self-managed superannuation fund nor a public offer superannuation fund within the meaning of SIS the Trustee shall comprise persons qualified in that respect under SIS.
- 5.6 At all times while the Fund is operated and maintained as a Self-Managed Superannuation Fund, it must satisfy the definition of a self-managed superannuation fund in SIS.
- 5.7 Prior to being appointed as Trustee, the proposed Trustee must first have consented in writing to such appointment and in the case of a Trustee which is a constitutional corporation within the meaning of SIS, each of the Directors of the Trustee must first have consented in writing to such appointment.

## 6. APPOINTMENT OF NEW TRUSTEE

- 6.1 The Trustee may with the consent of all Members appoint as Trustee a person eligible to be appointed Trustee in accordance with the Relevant Law.

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

## 7. CESSATION OF OFFICE OF TRUSTEE

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

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

## 8. CONTINUITY OF OFFICE

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

## 9. INDEMNITY OF TRUSTEE

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

- 9.1 in respect of acts or omissions involving wilful misconduct, wilful neglect or wilful default;
- 9.2 where the Trustee or its directors:—
  - (a) fail to act honestly;

- (b) intentionally or recklessly fail to exercise, in relation to any matter affecting the Fund, the requisite degree of care that the Trustee or a director is required to exercise; or
- 9.3 in respect of acts or omissions involving liability for a monetary penalty under a civil penalty order made under SIS.

## 10. MEETINGS OF TRUSTEES

### 10.1 Procedure Where Trustee is a Constitutional Corporation

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

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

### 10.2 Procedure Where Trustee comprises Individuals

- (a) To arrive at decisions, all individual trustees may:-

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

provided each individual trustee has been given the opportunity to participate in the decision-making process.

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

## 11. POWERS OF THE TRUSTEE

### 11.1 General Powers

- (a) The Trustee must not act in a manner which is prohibited by the Relevant Law; and
- (b) Subject to Clause 11.1(a) above, the Trustee may exercise its powers solely or jointly or in partnership with any other person, trustee, company or other entity (including the Trustee in its own or separate capacity) and shall have the power to appoint a custodian and to hold beneficial interests in assets held by such custodian.

### 11.2 Discretions

Subject to Clause 16, the Trustee shall have in the exercise of each and every power exercisable by the Trustee an absolute and uncontrolled discretion and is not bound to give to any person any reason for or explanation of the exercise of any such power. The powers conferred on or exercisable by the Trustee under this Deed are additional to and not in substitution for the powers conferred on or exercisable by it at law.

### 11.3 Power to Accept Contributions

The Trustee shall have the following powers:-



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

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

#### **11.4 Delegation of Powers**

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

#### **11.5 Appointment of Staff and/or Advisers**

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

#### **11.6 Expenses**

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

#### **11.7 Borrowing**

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

#### **11.8 Indemnities**

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

### **12. TRUSTEE'S INVESTMENTS**

#### **12.1 Investment Strategy**

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

## 12.2 Annual Review

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

## 12.3 Trustee's Investment Powers

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

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

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

### 14. INTEREST OF TRUSTEE IN INVESTMENTS

14.1 Subject to Clause 14.2, the Trustee shall have the power and is authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or a director of the Trustee being a corporation may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

14.2 The Trustee and any director shall disclose details of any interest in an investment to which Clause 14.1 applies in the manner prescribed under the Corporations Act and the Relevant Law.

### 15. PROVISION OF INVESTMENT CHOICE

15.1 The Trustee shall not be obliged to provide investment choice to Members or Beneficiaries of the Fund. The Trustee may however in its absolute discretion determine to provide investment choice subject to the Relevant Law either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund.

15.2 Where the Trustee determines that it is necessary or desirable so to do, it may create one or more sub-funds or investment pools in respect of one or more Members who have chosen individual investment strategies and may invest the assets held in each sub-fund or investment pool separately from or together with the assets of one or more other sub-funds or investment pools or assets of the Fund.

15.3 Upon admission of a person to Membership of the Fund or at any time whilst a person remains a Member or Beneficiary of the Fund, that person may, where the Trustee has determined to offer investment choice in accordance with Clause 15.1, select one or, where the Trustee has determined to permit Members to select multiple strategies, more than one of the investment strategies formulated by the Trustee under Clause 15.2 and direct the Trustee to invest part or the whole of the monies held in respect of that person under the Fund in accordance with the investment strategy or strategies selected by that person under this Clause PROVIDED THAT any such directions by the Member or Beneficiary shall only be given in the circumstances permitted by, and in accordance with, the Relevant Law and without limiting any of the foregoing the Trustee shall ensure that the Member or Beneficiary is provided with such information as shall be required by the Relevant Law in order to enable the Member or Beneficiary to make an informed decision.

15.4 A Member or Beneficiary who wishes to select one or more investment strategies pursuant to Clause 15.2 shall complete a request or any other documentation provided by the Trustee for this purpose which must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary. The Trustee shall not be bound to act on the request or other documentation unless that request or other documentation is completed in accordance with any instructions issued by or on behalf of the Trustee and does not breach any of the requirements of the Relevant Law.

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

15.6 The Trustee shall advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustee in respect of those Members or Beneficiaries or classes of Members or Beneficiaries who decline, or otherwise are unable to select an investment strategy.

## 16. RESTRICTIONS ON INVESTMENTS

### 16.1 In-house Assets

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

### 16.2 Arm's-Length Requirements

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

### 16.3 Acquisition of Assets from Members

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

## 17. TRUSTEE'S POWERS OF MANAGEMENT

### 17.1 Execution of Documents

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

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

### 17.2 Bank Accounts

The Trustee may:-

- (a) open and maintain a banking account or accounts at any bank or other recognised financial institution as the Trustee may from time to time determine;
- (b) operate upon the account or accounts:-
  - (i) by cheque and/or
  - (ii) by electronic means,in accordance with the authorities contained in Clause 17.1; and
- (c) permit cheques and other negotiable instruments for payment to the credit of the Fund bank account or accounts to be endorsed in accordance with the authorities contained in Clause 17.1.

### 17.3 Legal Proceedings

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

### 17.4 Insurance

The Trustee may insure or re-insure any risks contingencies or liabilities of the Fund, the Trustee or directors of the Trustee being a corporation including but not limited to any liability incurred as permitted by the Relevant Law and to effect acquire and maintain policies of insurance upon the life of any Member, and to pay any premium on such insurance or re-insurance and to purchase or pay any Annuity for or to any Member or any Spouse or Dependant of any Member. The Trustee may in the

name of the Fund arrange, effect, alter, amend and cancel such policy or policies of life insurance on the life of a Member for such amount and for such period and subject to such terms and conditions as the Trustee with the agreement of the relevant Member may determine.

### **17.5 Superannuation Surcharge**

The Trustee may:-

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

### **17.6 Member Protection Standards**

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

### **17.7 General Powers**

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

### **17.8 Custodian Trustee**

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

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

The Trustee may impose fees in relation to any:-

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

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

## **18. INSURANCE BENEFITS**

### **18.1 Level of Benefits**

The amount and nature of death or total and permanent disability or Totally but Temporarily Disabled Benefits (hereinafter called the **Insured Benefits**) shall be determined by the Trustee.