

# **DI & OC Locke Superannuation Fund**

**Self-Managed Superannuation Fund Trust Deed**

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## Table of contents

| <i>Clause</i> | <i>Page</i>  |           |
|---------------|--|-----------|
| <b>1</b>      | <b>Definitions and interpretations</b>                         | <b>1</b>  |
| 1.1           | Definitions  | 1         |
| 1.2           | SIS defined terms  | 4         |
| 1.3           | Interpretation   | 4         |
| 1.4           | Business Day   | 6         |
| <b>2</b>      | <b>Paramount provisions: complying with Superannuation Law</b> | <b>6</b>  |
| 2.1           | Trustee must comply  | 6         |
| 2.2           | Deemed compliance  | 6         |
| 2.3           | Trustee's consent required where necessary                     | 6         |
| <b>3</b>      | <b>Purpose of the Fund</b>                                     | <b>6</b>  |
| <b>4</b>      | <b>Participating in the Fund</b>                               | <b>6</b>  |
| 4.1           | Participation  | 6         |
| 4.2           | Cessation of membership  | 8         |
| 4.3           | Special arrangements   | 8         |
| <b>5</b>      | <b>Contributions</b>   | <b>8</b>  |
| <b>6</b>      | <b>Trustee</b>   | <b>8</b>  |
| 6.1           | Appointing and removing trustee                                | 8         |
| 6.2           | Trustee's obligations  | 10        |
| 6.3           | Absolute discretion  | 10        |
| 6.4           | General Powers   | 10        |
| 6.5           | Authorised Persons   | 10        |
| 6.6           | Confidentiality  | 11        |
| 6.7           | Tax  | 11        |
| 6.8           | Payments to Trustee  | 11        |
| 6.9           | Liability of Trustee   | 11        |
| 6.10          | Reliance on opinions, advice or information                    | 12        |
| 6.11          | Action notwithstanding interest                                | 12        |
| <b>7</b>      | <b>Investments of Fund</b>                                     | <b>12</b> |
| <b>8</b>      | <b>Changes to Deed</b>   | <b>12</b> |
| <b>9</b>      | <b>Accounts and Records</b>                                    | <b>13</b> |
| 9.1           | Accounts and records   | 13        |
| 9.2           | Auditor  | 13        |
| 9.3           | Accounts   | 13        |
| 9.4           | Surplus and Deficiency   | 14        |

|           |   |           |
|-----------|---|-----------|
| <b>10</b> | <b>Benefits</b>                             | <b>14</b> |
| <b>11</b> | <b>Terms of Pension Benefit</b>             | <b>16</b> |
| <b>12</b> | <b>Forfeiture</b>                           | <b>16</b> |
|           | 12.1 Automatic forfeiture of benefits       | 16        |
|           | 12.2 Forfeiture at discretion of trustee    | 16        |
|           | 12.3 Exception to forfeiture                | 17        |
|           | 12.4 Application of forfeited benefits      | 17        |
| <b>13</b> | <b>Adjustment of Benefits</b>               | <b>17</b> |
| <b>14</b> | <b>Discharge and release</b>                | <b>17</b> |
| <b>15</b> | <b>Payment of death benefits</b>            | <b>18</b> |
| <b>16</b> | <b>Payments under Superannuation Law</b>    | <b>18</b> |
| <b>17</b> | <b>Recoupment</b>                           | <b>18</b> |
| <b>18</b> | <b>Pension</b>                              | <b>19</b> |
| <b>19</b> | <b>Transfers</b>                            | <b>19</b> |
|           | 19.1 Transfers                              | 19        |
|           | 19.2 Transfers under the Superannuation Law | 19        |
| <b>20</b> | <b>Termination of Fund</b>                  | <b>19</b> |
|           | 20.1 Termination of Fund                    | 19        |
|           | 20.2 Application of Fund                    | 20        |
| <b>21</b> | <b>General</b>                              | <b>20</b> |
|           | 21.1 Proper Law                             | 20        |
|           | 21.2 Notices                                | 20        |

## This trust deed

is made on *15<sup>th</sup> JULY 2007* between the following parties:

1. **Derek Ivan Locke and Olga Christine Locke**  
both of 62 Chardonnay Drive, The Vines, Western Australia  
(Trustee)
2. **Derek Ivan Locke and Olga Christine Locke**  
both of 62 Chardonnay Drive, The Vines, Western Australia  
(Member)

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### Recitals

- A. The Trustee wishes to establish a superannuation fund for the benefit of the Members under the terms of this Deed.
- B. The Trustee is willing to act as trustee of the Fund for the purposes mentioned in this Deed and on the terms of this Deed.

### This deed witnesses

that in accordance with the provisions of this Deed:

- (a) a fund, to be known by the name DI & OC Locke Superannuation Fund (**Fund**), is established as an indefinitely continuing superannuation fund with effect from the date of this Deed;
- (b) the Trustee agrees to act as trustee of the Fund;
- (c) the Fund is vested in, controlled and administered by the Trustee in accordance with this Deed and the Superannuation Law; and
- (d) the Trustee holds the assets of the Fund on the trusts of and subject to this Deed.

## 1 Definitions and interpretations

### 1.1 Definitions

In this Deed:

**Account** means any account established and maintained under this Deed;

**Allocated Pension** means a pension which complies with the standards set out in SIS Regulations 1.06(4) and 1.07A;

**Auditor** means the person appointed under clause 9.2(a);

**Authorised Person** means a person who is or has been:

- (a) a director, officer or employee of the Trustee;
- (b) an agent or Qualified Adviser appointed by the Trustee to give assistance in the administration and operation of the Fund; or
- (c) any other person authorised by the Trustee in writing to carry out an act relating to the administration and operation of the Fund;



**Benefit** means a benefit payable under the Fund as provided in clause 10(a), including a Pension Benefit;

**Benefit Arrangement** means a fund or benefit arrangement which can pay money to the Fund, or which the Fund can pay money to, without breaching the Superannuation Law;

**Binding Death Benefit Nomination** means a Death Benefit Nomination which specifies that it is to be binding on the Trustee;

**Business Day** means a day on which banks are open for business in Western Australia other than a Saturday, Sunday or public holiday in Western Australia;

**Child** includes a step-child, ex-nuptial child and an adopted child;

**Complying Fixed Term Pension** means a pension which complies with the standards set out in SIS Regulations 1.06(7) and 1.07B and which is Life Assurance Funded;

**Complying Lifetime Pension** means a pension which complies with the standards set out in SIS Regulations 1.06(2) and 1.07B and which is Life Assurance Funded;

**Complying Market Linked Pension** means a pension which complies with the standards set out in SIS Regulations 1.06(8) and 1.07C;

**Death Benefit Nomination** means a signed and dated written notice given to the Trustee by a Member under clause 15(a);

**Deed** means this trust deed, anything deemed to be included under the Superannuation Law, and any arrangement, agreement, approval, rules or procedures effected pursuant to, or as specifically provided for by, any provision of this trust deed;

**Deficiency** means the deficiency determined by the Trustee in accordance with clause 9.4(a)(2);

**Dependant** means:

- (a) a Spouse;
- (b) a Child; and
- (c) any other person who in the opinion of the Trustee is or was at the relevant time a dependant of a Member within the meaning of the Superannuation Law;

**Employee** has the meaning given to it under section 15A of SIS as extended by section 17A of SIS;

**Fund** means the indefinitely continuing superannuation fund established by this Deed, and known by the name specified in clause (a) of this Deed;

**Fund Expenses** means both the direct and incidental costs and expenses of the establishment, operation, management, administration, investment and termination of the Fund, including a Tax, insurance costs and any fees or charges imposed on or paid by the Trustee in connection with the Fund;

**Insurer** means a life insurance company selected by the Trustee;



**Life Assurance Funded** means a Pension Benefit wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely for the purposes of providing benefits to the Members;

**Member** means the member who is a party to this Deed and any other person who is admitted by the Trustee to participate in the Fund, including any person to whom a death benefit is paid as a Pension Benefit;

**Member's Death Benefit** means a Benefit equal to the amount standing to the credit of a Member's account at the date of the Member's death, and includes:

- (a) any amounts that accrue to the Member's account; and
- (b) the proceeds of any Policy paid into the Member's account

before payment of the Benefit;

**Member's Reversionary Partner** means a reversionary partner of a Member, within the meaning of section 9BA(14) of the Social Security Act, assuming the Member is a primary beneficiary;

**Non Complying Fixed Term or Lifetime Pension** means a pension which complies with the standards set out in SIS Regulations 1.06(6) and 1.07B and which is Life Assurance Funded;

**Old Age Pension** means an old age pension for the purposes of paragraph 51(xxiii) of the Commonwealth Constitution;

**Pension Benefit** means a Benefit that is an Allocated Pension, a Non Complying Fixed Term or Lifetime Pension, a Complying Fixed Term Pension, a Complying Lifetime Pension, a Complying Market Linked Pension or otherwise constituting a pension for the purposes of Superannuation Law, which benefit may also qualify as an asset test exempt income stream under the Social Security Act or the Veterans' Entitlements Act;

**Policy** means an insurance policy (whether in respect of an individual Member or group of Members) effected by the Trustee with an Insurer, as provided in the Deed in order to provide benefits under the Fund;

**Power** means a power, right, discretion, remedy or authority of any nature;

**Qualified Adviser** means a person considered by the Trustee to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise, including an accountant, barrister, solicitor, actuary, medical practitioner, Insurer, investment manager or other qualified person;

**Regulator** means, in relation to a matter, the applicable person (as the context requires) who exercises a statutory function in relation to the matter under the Superannuation Law or the Social Security Act;

**Reserve Account** means the account or accounts of that name maintained in respect of the Fund in accordance with clause 9.3;

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

**Social Security Act** means:

- (a) the Social Security Act 1991; and



- (b) all other requirements, whether legislative or otherwise, in relation to the Social Security Act 1991 with which a payment made from the Fund must comply (or with which, in the opinion of the Trustee, the payment ought to comply) in order to be treated as an asset test exempt income stream for the purposes of the Social Security Act 1991;

**Superannuation Law** means:

- (a) SIS;
- (b) the requirements in the Tax Act and any other Act which imposes a charge, levy, surcharge, duty or tax on any superannuation benefit; and
- (c) all other applicable requirements, whether legislative or otherwise, including:
- (1) any administrative directions, instructions, rulings or guidelines issued by a Regulator; or
  - (2) statements by the Government of the Commonwealth of Australia or of any State or Territory of Australia advising of changes or proposed changes to the above Acts or requirements with which the Fund must comply (or with which, in the opinion of the Trustee, the Fund ought to comply) in order to be a complying superannuation fund within the meaning of the Tax Act;

**Surplus** means the surplus determined by the Trustee in accordance with clause 9.4(a)(2);

**Tax** includes any Commonwealth or State government impost (including a tax, levy, charge, surcharge or duty) which is or might become payable in any respect in connection with the Fund, this Deed or anything done or which may be done under this Deed;

**Tax Act** means the Income Tax Assessment Act 1936 and/or the Income Tax Assessment Act 1997, as the context requires;

**Trustee** means the trustee named in this Deed or any other trustee of the Fund for the time being; and

**Veterans' Entitlements Act** means:

- (a) the Veterans' Entitlements Act 1986; and
- (b) all other requirements, whether legislative or otherwise, in relation to the Veterans' Entitlements Act 1986 with which a payment made from the Fund must comply (or with which, in the opinion of the Trustee, the payment ought to comply) in order to be treated as an asset test exempt income stream for the purposes of the Veterans' Entitlements Act 1986.

## 1.2 SIS defined terms

Unless the context otherwise specifies or requires, an expression used in this Deed which is defined in SIS has the same meaning in this Deed.

## 1.3 Interpretation

- (a) **Amended provisions:** Subject to any contrary provision in this Deed, a reference to this Deed or any other deed, agreement, instrument or contract



includes a reference to this Deed, that other deed, agreement, instrument or contract, respectively, as amended, supplemented or varied from time to time.

(b) **Paramount provisions:** The provisions of clause 2 override any other provisions of this Deed.

(c) **Rules of interpretation:**

In this Deed, unless the context otherwise requires:

- (1) a reference to a "person" includes any company, partnership, joint venture, association, corporation or other body corporate and any government authority but the words "natural person" have their normal meaning;
- (2) a reference to a statute includes a regulation, by-law, requisition or order made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, requisition or order for the time being in force;
- (3) a reference to a section of or a regulation under a statute includes any amendment to, replacement of or re-enactment of that section or regulation and any other section of or regulation under the statute required to give meaning, force or effect to the section or regulation;
- (4) if a party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;
- (5) headings in this Deed are for convenience and identification of clauses only and do not otherwise affect its interpretation;
- (6) where appropriate:
  - (A) words denoting the singular include the plural;
  - (B) words denoting the plural include the singular; and
  - (C) words denoting a gender include each gender;
- (7) a covenant by a party not to do or omit to do any act or thing includes:
  - (A) a covenant not to suffer that act or thing to be done or omitted by any agent or employee of the party; and
  - (B) a covenant to do everything necessary to ensure that the act or thing is not done or omitted to be done; and
- (8) all matters which are stated as being included in the ambit of an expression are without limitation to the breadth and generality of that expression.

(d) **Severance:** If necessary, in order to avoid any provision of this Deed or this Deed being made invalid by a law, the provision may be read down or severed to preserve the validity of the provision or this Deed as the case may be.



- (e) **State Trustee Acts:** To the extent legally possible, and unless the Trustee otherwise determines, this Deed is not subject to the Trustee Act of the State or Territory in which this Deed is executed or any of its equivalents in any of the States or Territories of Australia.

#### 1.4 Business Day

When the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day.

## 2 Paramount provisions: complying with Superannuation Law

### 2.1 Trustee must comply

The Trustee must comply with the requirements of the Superannuation Law and is fully empowered (without being obliged) to comply with any provision or standard of the Superannuation Law which is not a requirement.

### 2.2 Deemed compliance

The Trustee is deemed to comply with the Superannuation Law if the Regulator is satisfied that compliance has occurred or determines that the Fund will be treated as if compliance has occurred.

### 2.3 Trustee's consent required where necessary

If a provision of this Deed would otherwise be void because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee,

the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

## 3 Purpose of the Fund

The sole or primary purpose of the Fund is to provide Old Age Pensions to or in respect of Members in the event of their retirement or for a Member's Dependents in the event of the death of a Member.

## 4 Participating in the Fund

### 4.1 Participation

- (a) A person who is eligible under the Superannuation Law to receive benefits from the Fund may by completing a form prescribed by the Trustee apply to become a Member.
- (b) The Trustee may in its absolute discretion and without having to give a reason for, or explanation of, its decision:



- (1) accept the application unconditionally;
- (2) accept the application subject to conditions with Power to later vary or remove any such conditions;
- (3) delay consideration of the application; or
- (4) reject the application,

and where the application is accepted under clause 4.1(b)(1) or clause 4.1(b)(2), the applicant becomes a Member from the date of such acceptance or such other date as determined by the Trustee.

- (c) The Trustee must refuse an application for membership if the admission of the applicant as a Member would cause the Fund not to be a self managed superannuation fund.
- (d) Before the Trustee makes a decision under clause 4.1(b), the Trustee may to the extent permitted by the Superannuation Law request the person applying for membership with the Fund to provide all relevant information and evidence and sign all documents as may be required by the Trustee.
- (e) The Trustee must deal with a person's application money:
  - (1) pending the processing and acceptance of that application; and
  - (2) where the application is refused,in a manner consistent with the Superannuation Law.
- (f) The Trustee may determine that a person who has not applied for membership in accordance with this clause 4 is a Member on and from a date determined by the Trustee although that person is not required to contribute to the Fund without his or her prior consent.
- (g) Notwithstanding clause 4.3(b)(2), a Member has no right to claim any interest in, or exercise any right in relation to, any particular asset of the Fund.
- (h) Where a Policy is effected in respect of a Member, the Benefits of the Member must be determined in accordance with the terms and conditions of that Policy.
- (i) Each Member irrevocably appoints the Trustee his or her attorney to do anything permitted or required by this Deed.
- (j) Any condition properly imposed under this Deed in respect of a Member, and any consent, approval or agreement given or made by a Member, is binding on:
  - (1) the Member concerned;
  - (2) an heir or executor of the Member; and
  - (3) a person who is or would otherwise have been entitled to claim a benefit in respect of the Member or upon the occurrence of an event or circumstances affecting the Member,

and this Deed takes effect accordingly.

- (k) Each Member is bound by this Deed and all approvals and acts under this Deed in relation to the Member.



## 4.2 Cessation of membership

- (a) A Member ceases to be a member of the Fund when all the Benefits of the Member are paid or otherwise satisfied or dealt with under this Deed.
- (b) If no contributions are made in relation to a Member, that Member ceases to be a Member at the discretion of the Trustee or as otherwise set out in this Deed.

## 4.3 Special arrangements

- (a) A person may agree in writing with the Trustee that the membership of the person is subject to, or is varied in accordance with, the conditions contained in the agreement, including the amount of contributions to be made or benefits to be paid in respect of the person. Such agreement is binding on all interested persons without the need to amend this Deed.
- (b) The Trustee may (but is not obliged to) provide Members with the ability to direct that a separate investment may be made in respect of the Member being:
  - (1) a particular investment option or investment strategy;
  - (2) where permitted by the Superannuation Law, an investment in a specific asset.
- (c) Subject to SIS, if a separate investment is made for a Member under clause 4.3(b), it is made for the sole benefit of and at the sole risk of the Member and any income or gains or losses or expenses incurred in respect of that separate investment must be attributed to the Account or Benefits of the Member.
- (d) The Trustee is not liable for:
  - (1) acquiring, delaying acquiring, retaining or failing to dispose of; or
  - (2) the performance of or for any loss attributable to, any separate investment referred to in clause 4.3(c).

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## 5 Contributions

- (a) Any person permitted by the Superannuation Law may contribute in respect of a Member in a manner as permitted by the Superannuation Law.
- (b) The Trustee in its absolute discretion may determine what contributions and other amounts may or must be paid to or accepted into the Fund.
- (c) The Trustee may repay from the Fund any contribution or other amount paid to it in error.

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## 6 Trustee

### 6.1 Appointing and removing trustee

- (a) The Trustee may be:



- (1) a Corporation provided that:
  - (A) where the Fund has only 1 Member:
    - (i) the Member is the sole director of the Corporation;
    - (ii) the Member is one of only 2 directors, and the 2 directors are relatives; or
    - (iii) the Member is one of only 2 directors, and the Member is not an Employee of the other director;

or
  - (B) where the Fund has more than 1 Member:
    - (i) no Member is an employee of another Member, unless the relevant Members are relatives;
    - (ii) each Member is a director; and
    - (iii) each director is a Member; or
- (2) a natural person provided that:
  - (A) where the Fund has only 1 Member:
    - (i) the Member is one of only 2 Trustees, one of whom is the Member and the other is a relative of the Member; or
    - (ii) the Member is one of only 2 Trustees, and the Member is not an Employee of the other Trustee; or
  - (B) where the Fund has more than 1 Member:
    - (i) no Member is an Employee of another Member, unless the relevant Members are relatives;
    - (ii) each Trustee is a Member; and
    - (iii) each Member is a Trustee.
- (b) The Trustee may appoint an additional or substitute trustee of the Fund. The appointment must be in writing and comply with the Superannuation Law.
- (c) A trustee holds office until:
  - (1) the Trustee becomes a disqualified person under the Superannuation Law or is otherwise disqualified from that office by operation of law;
  - (2) the Trustee is removed from office by the Regulator or by notice in writing from the Members;
  - (3) the Trustee retires from office by giving 30 days' written notice to the Members (or such lesser period as the Members may agree); or
  - (4) if the Trustee is a natural person, that person dies or becomes of unsound mind.
- (d) Where the office of Trustee becomes vacant by the operation of clause 6.1(c)(4), the legal personal representative of the Trustee may by notice in

writing appoint another natural person to act as the Trustee to fill the vacancy, and the person so appointed as Trustee will have the same Powers and may in every respect act as if he or she had originally been appointed the Trustee.

- (e) Any person permitted to do so by the Superannuation Law may act as a Trustee or as a director of a Corporation which is the Trustee.
- (f) Despite anything to the contrary in this Deed, the composition, appointment and removal of a Trustee must comply with the Superannuation Law, and any Trustee who holds office must not act in any manner which may prejudice any existing or potential taxation concessions of the Fund under the Superannuation Law.
- (g) A retiring Trustee must transfer the assets of the Fund and deliver the books and records relating to the Fund to the new or remaining Trustee.

## **6.2 Trustee's obligations**

The Trustee must perform and exercise the Trustee's duties and Powers in the best interests of the Members and in all respects in compliance with the Superannuation Law.

## **6.3 Absolute discretion**

- (a) Except as otherwise expressly provided in this Deed, the Trustee has absolute and uncontrolled discretion in the exercise of any Power and is not required to justify the exercise of, or failure to exercise, any Power.
- (b) The Powers conferred on the Trustee by this Deed are additional to the Powers exercisable by a trustee at law.
- (c) Subject to the Superannuation Law and clause 15, any determination made by the Trustee under this Deed to pay or apply any amount to or for the benefit of a Member or a Member's Dependant may at any time in the absolute discretion of the Trustee be varied, altered, revoked or replaced.

## **6.4 General Powers**

Except as otherwise expressly provided in this Deed, the Trustee has complete management and control of the Fund and may, without limitation, exercise all the Powers of a natural person in order to:

- (a) properly administer and maintain the Fund;
- (b) exercise any Power;
- (c) perform its duties; and
- (d) pay Fund Expenses.

## **6.5 Authorised Persons**

To the extent permitted by the Superannuation Law, the Trustee may appoint or remove any Authorised Person and pay the Authorised Person's fees from the Fund.



## 6.6 Confidentiality

Except to the extent reasonably necessary in the operation, management and administration of the Fund and in giving effect to this Deed, the Trustee and any Authorised Person must keep as confidential all information which becomes known to that person in connection with the operation, management and administration of the Fund.

## 6.7 Tax

- (a) Without affecting the generality of clauses 6.3 and 6.4, the Trustee may take any action which it may consider appropriate in paying or taking account of any Tax including:
- (1) reducing or otherwise adjusting the amount of any benefit payable from the Fund;
  - (2) transferring a Tax liability to another person in a manner contemplated under the Superannuation Law;
  - (3) deducting amounts from accounts or from amounts before they are credited to accounts; and
  - (4) establishing reserves and making provisions in the accounts of the Fund for payments from the Fund to relevant governmental authorities.
- (b) Without limiting clause 6.9(a), if Tax is payable by the Trustee on any payment to the Trustee under clause 6.8, the Trustee is entitled to be indemnified in respect of the amount of that Tax.

## 6.8 Payments to Trustee

- (a) The Trustee must not receive any remuneration from the Fund for work done or services performed as Trustee in connection with the Fund.
- (b) The Trustee is entitled to be reimbursed for Fund Expenses incurred by it in the administration and operation of the Fund.
- (c) If the Trustee or an Authorised Person performs work for the Fund in a personal capacity, he or she is entitled to be paid from the Fund all usual fees for work done by that person or any firm in which that person is a partner or an employee, including anything which could be done by an unqualified person.

## 6.9 Liability of Trustee

- (a) To the extent permitted by law but subject to clause 6.9(b), the Trustee and each Authorised Person is entitled to be indemnified from the Fund in respect of any liability (including for negligence) incurred while acting as Trustee or Authorised Person.
- (b) Clause 6.9(a) does not apply where the person seeking indemnity was dishonest (being guilty of actual fraud) or intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence such person is or was required to exercise.
- (c) Without limiting clause 6.9(a), the Trustee may:

- (1) effect or acquire an insurance policy in respect of any potential liability of the Trustee or an Authorised Person; and
- (2) pay from the Fund premiums and other outgoings in respect of such insurance policy.

#### **6.10 Reliance on opinions, advice or information**

The Trustee and each Authorised Person may rely on, and are not liable for acting on, any opinion, advice or information obtained from a Regulator or a Qualified Adviser in connection with the Fund.

#### **6.11 Action notwithstanding interest**

- (a) Notwithstanding that a person is a Member or in any way associated with the Fund, such person may act as delegate, director, agent or adviser of the Trustee.
- (b) Neither this Deed nor a fiduciary relationship created in equity or under the Superannuation Law restricts any person from:
  - (1) acting as the Trustee, a director of the Trustee or as an Authorised Person;
  - (2) participating in the Fund;
  - (3) doing business with the Fund or the Trustee; or
  - (4) being involved with or interested in any person who participates in, or does business with, the Fund or the Trustee.

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### **7 Investments of Fund**

- (a) Subject to the Superannuation Law, the Trustee may invest, deal with or deploy the assets of the Fund in any manner or form which the Trustee may consider to be a suitable investment for the Fund as if it were the sole and absolute legal and beneficial owner of those assets.
- (b) The Trustee must at all times:
  - (1) maintain separate records to enable identification of the property of the Fund; and
  - (2) use the property of the Fund only for the purposes of the Fund.

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### **8 Changes to Deed**

This Deed may be changed, amended, resettled, replaced or merged with any other trust either prospectively or retrospectively by the Trustee by way of deed.



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## 9 Accounts and Records

### 9.1 Accounts and records

- (a) The Trustee must keep records and financial accounts of the Fund as required by the Superannuation Law.
- (b) The accounts and records prepared under clause 9.1(a) must be audited by the Auditor annually and at any other intervals determined by the Trustee and the Auditor must certify to the Trustee the result of each audit in writing.
- (c) The Trustee must obtain any certificate from an actuary that is required by the Superannuation Law.

### 9.2 Auditor

- (a) The Trustee must appoint an auditor to audit the records and financial accounts of the Fund and to provide reports as required by the Superannuation Law.
- (b) The Auditor may be removed by the Trustee and, if so, the Trustee must appoint another person to act as Auditor.
- (c) Each appointment of an Auditor will be on terms determined by the Trustee.

### 9.3 Accounts

- (a) The Trustee may establish and maintain any Accounts it considers suitable including Accounts to record the benefits of the Members. It must credit and debit those accounts with any portion of any Fund assets or any Fund Expense it determines is attributable to those accounts and may otherwise credit and debit those accounts with any other amount and in any other manner it considers appropriate.
- (b) Without limiting clause 9.3(a), the Trustee may establish and maintain Reserve Accounts in which must be credited or debited as the case requires:
  - (1) any amount not required to meet current benefit liabilities;
  - (2) any amount which is forfeited or deducted from a benefit or from a Member's interest in the Fund in accordance with this Deed and which is not otherwise applied as provided in this Deed;
  - (3) Fund Expenses to the extent determined by the Trustee that have not been deducted from a Member's Account;
  - (4) any amount of the Surplus or Deficiency allocated to the Reserve Account by the Trustee under clause 9.4(b); and
  - (5) any other amounts the Trustee determines should be credited or debited to the Account, including in augmenting any Benefit actually or prospectively payable to or in respect of a Member or a former Member or any Dependant of a Member pursuant to this Deed.

- (c) The Trustee may maintain within the Reserve Account any sub-account it considers suitable and may credit or debit the relevant sub-account with any amounts which may be debited or credited to the Reserve Account in accordance with this Deed.

#### **9.4 Surplus and Deficiency**

- (a) At least once a year, and at any other times determined by the Trustee, the Trustee must:
- (1) cause the Fund (other than a Policy to the extent it provides insurance solely against risk) to be valued; and
  - (2) subject to clauses 4.3(b)(2) and 4.3(c), determine the amount of the Surplus or Deficiency in the Fund which, in the opinion of the Trustee, it is appropriate to allocate to each Member's Account and Reserve Accounts, if any.
- (b) The amount of any Surplus or Deficiency determined under clause 9.4(a) must be apportioned between and allocated to each Member's Account and Reserve Accounts, if any, in the manner and on the basis determined by the Trustee, either generally or in any particular case.
- (c) In determining the Surplus or Deficiency from time to time:
- (1) the Trustee must have regard to the income of the Fund, appreciation or depreciation in the value of the assets (including unrealised assets) of the Fund, the liabilities (including unrealised liabilities) of the Fund, the Fund Expenses and any other matters the Trustee may consider appropriate; and
  - (2) subject to the Superannuation Law, the Trustee may generally adopt whatever assumptions, methodology and procedures the Trustee considers appropriate or expedient, either generally or in any particular case, including:
    - (A) methodology and procedures concerning the method and basis of valuing particular assets;
    - (B) the intervals at which valuations must be carried out; and
    - (C) the reserving or averaging of income.

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## **10 Benefits**

- (a) The amount of a Benefit payable from the Fund to or in respect of a Member is:
- (1) the value of the accounts maintained in respect of the Member together with the proceeds of any Policy received in respect of the Member; or
  - (2) otherwise as set out in this Deed or as determined by the Trustee in its absolute discretion.



- (b) A Benefit may be paid to a Member when the Member becomes entitled but must be paid to a Member when the Member is obliged under the Superannuation Law to receive a benefit from the Fund.
- (c) Subject to the Superannuation Law:
  - (1) a Benefit must be paid to a Member as a Pension Benefit unless an election has been made by the Member and agreed to by the Trustee, to commute the Benefit in whole or in part, or by instalments, or by a transfer in specie;
  - (2) for the avoidance of doubt, a Member may commute a part or all of a Benefit to which they are entitled to a lump sum, prior to any pension commencing or being established for the Member;
  - (3) the Member's Death Benefit must be paid in accordance with clause 15 unless the Member was receiving a pension and has nominated one or more reversionary beneficiaries in accordance with clause 10(j); and
  - (4) unrestricted non-preserved benefits may be paid at any time but the Trustee is not required to so pay such Benefits.
- (d) For the purpose of clause 10(c)(1), a Member may select the form of the Pension Benefit payable to the Member and the Benefit may consist of one or more of the different types of Pension Benefit able to be paid by the Trustee.
- (e) The Trustee is not required to pay a Benefit unless the person claiming the Benefit:
  - (1) makes proper application to the Trustee in the form required by the Trustee;
  - (2) provides information to the Trustee as requested by it to substantiate such Benefit; and
  - (3) gives instructions in relation to the method of payment of the Benefit which are acceptable to the Trustee.
- (f) A Benefit is calculated as at the date the event which gave rise to the entitlement of the Member occurred and may include any Surplus or Deficiency (as the case may be) if the Trustee so determines.
- (g) The Trustee may pay all or part of a Benefit by the transfer of an asset or assets.
- (h) The Trustee may pay a Benefit of a Member, who in the Trustee's opinion is not capable of receiving that Benefit or managing his or her affairs, to any person for the benefit of the Member.
- (i) Any amount held in the Fund which is not allocated to any Member or to any account or which may not or cannot be paid or which is not payable by the Trustee to any Member may be dealt with as the Trustee determines for any purpose determined by the Trustee which is permissible under the Superannuation Law including:
  - (1) the reduction of contributions of a Member;
  - (2) to meet Fund Expenses; or

- (3) the augmentation of any Benefit actually or prospectively payable to or in respect of a Member or a former Member or any Dependant of a Member pursuant to this Deed.
- (j) A Member who receives a Pension Benefit may nominate one or more reversionary beneficiaries to receive pension payments after the Member's death. The nomination must be in the form prescribed by the Trustee.
- (k) An election made by a Member under this clause must be in writing and where applicable in the form as prescribed by the Trustee from time to time.

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## 11 Terms of Pension Benefit

The terms of any Pension Benefit payable under this Deed shall be determined by the Trustee from time to time by way of contract between the Trustee and the recipient of the pension.

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## 12 Forfeiture

### 12.1 Automatic forfeiture of benefits

Subject to clause 12.3, a Member or any other beneficiary:

- (a) who assigns or charges, or attempts to assign or charge, any interest in the Fund to which he or she may become entitled;
- (b) whose interest in the Fund, whether by their own act, operation of law or otherwise would, but for this clause, become payable to or vested in any other person or organisation; or
- (c) who for any reason may be unable personally to receive or enjoy the whole or part of any interest in the Fund to which he or she may become entitled or, in the opinion of the Trustee, is incapable of managing his or her affairs;

must, subject to the Superannuation Law, forfeit entitlement to all of his or her interest to which he or she may become entitled in the Fund or in any other situation permitted by the Superannuation Law, may forfeit entitlement to all of his or her interest to which he or she may become entitled in the Fund.

### 12.2 Forfeiture at discretion of trustee

Subject to clause 12.3, where, in the opinion of the Trustee, a Member or any other beneficiary for any reason may be unable personally to receive or enjoy the whole or part of any interest in the Fund to which he or she may become entitled or, in the opinion of the Trustee, is incapable of managing his or her affairs, the Trustee may subject to the Superannuation Law, forfeit entitlement to all of his or her interest to which he or she may become entitled in the Fund.



### 12.3 Exception to forfeiture

Clauses 12.1 and 12.2 do not apply to cancel, forfeit, reduce, qualify or confer a discretion relating to the beneficial interest of a Member or other beneficiary in the Fund in the event that the Member or other beneficiary becomes bankrupt, commits an act of bankruptcy or executes a deed of assignment or deed of arrangement under the Bankruptcy Act 1966 or in any other event where the law prohibits such an application.

### 12.4 Application of forfeited benefits

- (a) Subject to the Superannuation Law, any interest forfeited pursuant to clauses 12.1 or 12.2 must be credited to the Reserve Account.
- (b) If a forfeiture occurs in respect of a Member pursuant to clauses 12.1 or 12.2 and, in the opinion of the Trustee, the event or circumstance giving rise to that forfeiture has ceased to affect that Member or that Member's property, the Trustee may secure such benefit in respect of that Member as the Trustee considers appropriate, having regard to any payment or application which may have already taken place under clause 12.1(a).

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## 13 Adjustment of Benefits

- (a) The Trustee may adjust Benefits and rights in respect of a Member to take account of:
  - (1) any contributions which have not been paid;
  - (2) any Fund Expense;
  - (3) any incorrect, inaccurate or misleading information supplied, or lack of information supplied, in respect of a Member; or
  - (4) the extent to which an Insurer fails to provide insurance under a Policy, fails to pay or reduces the payment of any insurance proceeds, defers the payment of any proceeds, or imposes terms and conditions on which the insurance proceeds are payable.
- (b) The Trustee may deduct from a Member's interest in the Fund or from any money which would be payable to or for the benefit of the Member, and may retain in the Fund any amount determined by the Trustee to be owing to the Trustee or the Fund by that Member either solely or in conjunction with any other person on any account whatever.

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## 14 Discharge and release

The Trustee is completely discharged in respect of any payment or transfer in accordance with this Deed by the payment or the transfer, including a payment or a transfer to a person the Trustee believes in good faith is entitled to the payment or transfer.

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## 15 Payment of death benefits

- (a) A Member may, from time to time, give the Trustee a Death Benefit Nomination.
- (b) Subject to the terms of any Pension Benefit, if:
  - (1) a Member dies;
  - (2) the Member has provided a Binding Death Benefit Nomination;
  - (3) the Binding Death Benefit Nomination has not been revoked by the Member; and
  - (4) payment in accordance with the Binding Death Benefit Nomination would not be in breach of any Superannuation Law,the Trustee must pay the Member's Death Benefit in accordance with the Member's nomination set out in the Binding Death Benefit Nomination.
- (c) If:
  - (1) the Trustee is prohibited from paying the Member's Death Benefit in accordance with a Binding Death Benefit Nomination; or
  - (2) the Member has not given the Trustee a Binding Death Benefit Nomination,the Trustee must pay the Member's Death Benefit to the person or persons and in the proportions as determined by the Trustee.
- (d) Subject to clause 15(e), the Trustee may pay a Member's Death Benefit in any manner as permitted by the Superannuation Law, including as a lump sum or as a Pension Benefit or both.
- (e) If permitted by Superannuation Law, the Trustee must pay a Member's Death Benefit in the manner specified in:
  - (1) a Binding Death Benefit Nomination covered by clause 15(b); or
  - (2) where clause 15(e)(1) does not apply, a signed and dated notice given to the Trustee by the beneficiary of a Member's Death Benefit.

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## 16 Payments under Superannuation Law

The Trustee may (but is not obliged to) pay any Benefit where permitted by the Superannuation Law and must pay any Benefit where required by the Superannuation Law.

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## 17 Recoupment

The payment of a Benefit is subject to the following conditions:

- (a) If the Trustee determines, after paying the Benefit, that the Trustee overpaid the amount of the Benefit to which the recipient was legally entitled the recipient:



- (1) must repay to the Trustee on demand such amount as the Trustee determines should not have been paid to the recipient; and
  - (2) releases the Trustee from any loss or damage that the recipient may suffer as a result of the Trustee making the overpayment; and
- (b) If the Trustee does not receive in full the amount of the overpayment in clause 17(a)(1), the Trustee may recoup that amount from the Fund.
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## **18 Pension**

- (a) The Trustee and a Member may agree on the Pension Benefit to be paid to the Member and the manner in which it will be provided.
  - (b) If the Member and the Trustee do not agree on the Member's selection of the Pension Benefit, the Trustee, in its sole discretion, must select the Pension Benefit, and purchase or provide the same on the Member's behalf.
  - (c) The Trustee may, on being advised of an election by the Member under clause 10(c), change the composition of the Member's Benefit as between lump sum and Pension Benefits (as the case may be) to reflect that election, subject to this Deed, any relevant conditions determined from time to time by a Regulator, the Superannuation Law, the Social Security Act or the Veterans' Entitlements Act.
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## **19 Transfers**

### **19.1 Transfers**

- (a) The Trustee may arrange for the transfer into the Fund of cash or property with:
  - (1) the person responsible for a Benefit Arrangement; or
  - (2) a person who is or was a participant in a Benefit Arrangement, on conditions agreed between the Trustee and the person.
- (b) The Trustee may pay a benefit of a Member to a Benefit Arrangement with or without the consent of the Member if the Superannuation Law permits.

### **19.2 Transfers under the Superannuation Law**

The Trustee may, and if required by the Superannuation Law must, transfer benefits of a Member to a Benefit Arrangement or to the Regulator in the circumstances contemplated by the Superannuation Law.

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## **20 Termination of Fund**

### **20.1 Termination of Fund**

- (a) The Trustee may terminate the Fund in its absolute discretion.

- (b) The Fund must be terminated if there is no Trustee or the Superannuation Law requires.

## 20.2 Application of Fund

Upon termination:

- (a) the net proceeds of the Fund, after meeting Fund Expenses, must be applied to or towards the payment of Members' Benefits in such form and manner and in such amount as the Trustee determines; and
- (b) the Trustee may deal with any remaining money or property in the Fund as it determines in its absolute discretion.

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## 21 General

### 21.1 Proper Law

This Deed is governed by, and takes effect and must be construed in accordance with, the proper law of this Deed, which is the law of Western Australia.

### 21.2 Notices

Any communication in connection with the Fund:

- (a) must be either in writing or if given orally must conform to instructions given by the Trustee;
- (b) may be given to a Member:
  - (1) at his or her residential address as set out in the Member's Fund membership application form; or
  - (2) at such other address last notified to the Trustee by the Member; and is deemed to be received by the Member on the earlier of:
    - (3) 3 Business Days after the notice is sent by mail; and
    - (4) the day the notice is received at the appropriate address; and
- (c) must be given to the Trustee at its address set out at the beginning of this Deed, or at such other address as last notified to a Member by the Trustee, and is effective only when received by the Trustee at the required address.



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**Executed as a deed:**

**Trustee**

**Signed sealed and delivered by  
Derek Ivan Locke**  
in the presence of:

J. D. DeLongis  
Witness

D. Locke  
Trustee

JUNE DE LONGIS  
Name (please print)

**Signed sealed and delivered by  
Olga Christine Locke**  
in the presence of:

J. D. DeLongis  
Witness

O. C. Locke  
Trustee

JUNE DE LONGIS  
Name (please print)

**Member**

**Signed sealed and delivered by  
Derek Ivan Locke**  
in the presence of:

J. D. DeLongis  
Witness

D. Locke  
Member

JUNE DE LONGIS  
Name (please print)

**Signed sealed and delivered by  
Olga Christine Locke**  
in the presence of:

J. D. DeLongis  
Witness

O. C. Locke  
Member

JUNE DE LONGIS  
Name (please print)